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A N  
AUTHENTIC AND IMPARTIAL COPY  
OF THE  
T R I A L  
O F

The Hon. AUGUSTUS KEPPEL,  
ADMIRAL OF THE BLUE,

Held at PORTSMOUTH on the 7th of January, 1779,  
and continued by several Adjournments to the  
11th Day of February, 1779.

Taken in SHORT HAND, by a Person who at-  
tended during the whole TRIAL.

And printed by the Desire of a SOCIETY of GENTLEMEN.

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WITH SEVERAL INTERESTING PAPERS.

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M.DCC.LXXIX.



ANTHROPOLOGICAL AND ETHNOGRAPHICAL

OF THE

BRITISH MUSEUM

ANNUAL REPORT

FOR THE YEAR 1875



CONTAINING A LIST OF THE SPECIMENS

RECEIVED DURING THE YEAR

AND A LIST OF THE SPECIMENS

LOANED TO THE MUSEUM

FOR THE YEAR 1875

BY THE DIRECTOR

AND THE CURATORS

OF THE BRITISH MUSEUM

AND THE MUSEUM OF COMPARATIVE ZOOLOGY

AT THE BRITISH MUSEUM

AND THE MUSEUM OF COMPARATIVE ZOOLOGY

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AND THE MUSEUM OF COMPARATIVE ZOOLOGY

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*In this List the Reader is desired to make the following Corrections :*  
*Take the Terrible from Sir Hugh Palliser's Division, and place her to Admiral Keppel's, and add the Yarmouth, Captain Bateman to Sir Hugh Palliser's in her stead, Captain Ross had then the Screw-bury, and Captain Brereton the Duke, though since altered; instead of the Medea and Rattle-snake, put the Lively and Alert. The Resolution and Defence did not join the Fleet time enough.*

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## P A P E R S

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## P A P E R S previous to the TRIAL.

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*Victory, at Sea, July 30, 1778.*

S I R,

**M**Y letters of the 23d and 24th instant, by the Peggy and Union cutters, acquainted you, for their Lordships information, that I was in pursuit, with the King's fleet under my command, of a numerous fleet of French ships of war.

From that time, till the 27th, the winds constantly in the S. W. and N. W. quarters, sometimes blowing strong, and the French fleet always to windward going off, I made use of every method to close in with them that was possible, keeping the King's ships at the same time collected, as much as the nature of a pursuit would admit of, and which became necessary from the cautious manner the French proceeded in, and the disinclination that appeared in them to allow of my bringing the King's ships close up to a regular engagement: this left but little other chance of getting in with them, than by seizing the opportunity that offered, the morning of the 27th, by the wind's admitting of the van of the King's fleet under my

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command



command leading up with, and closing with, their center and rear.

The French began firing upon the headmost of Vice-admiral Sir Robert Harland's division, and the ships with him, as they led up; which cannonade the leading ships and the Vice-admiral soon returned, as did every ship as they could close up: the chase had occasioned their being extended, nevertheless they were all soon in battle.

The fleets, being upon different tacks, passed each other very close; the object of the French seemed to be the disabling of the King's ships in their masts and sails, in which they so far succeeded as to prevent many of the ships of my fleet being able to follow me when I wore to stand after the French fleet; this obliged me to wear again to join those ships, and thereby allowed of the French forming their fleet again, and range it in a line to leeward of the King's fleet towards the close of the day; which I did not discourage, but allowed of their doing it without firing upon them, thinking they meant handsomely to try their force with us the next morning; but they had been so beaten in the day, that they took the advantage of the night to go off.

The wind and weather being such that they could reach their own shores before there was any chance of the King's fleet getting up with them, in the state the ships were in, in their masts, yards, and sails, left me no choice of what was proper and adviseable to do.

The spirited conduct of Vice-admiral Sir Robert Harland, Vice-admiral Sir Hugh Palliser, and the Captains of the fleet, supported by their officers and men, deserves much commendation.

A list of the killed and wounded is herewith inclosed.

I send Captain Faulknor, Captain of the Victory,  
with this account to their Lordships, and am, Sir,

Your most obedient,

And very humble servant,

A. KEPPEL.

PHILIP STEPHENS, *Esq.*

*Secretary to the Admiralty.*

*List of men killed and wounded, in the action with the  
French fleet, the 27th of July, 1778.*

| <i>Ships Names</i> | <i>Killed</i> | <i>Wounded</i> | <i>Ships Names</i> | <i>Killed</i> | <i>Woun</i> |
|--------------------|---------------|----------------|--------------------|---------------|-------------|
| Monarch            | 2             | 9              | Prince George      | 5             | 15          |
| Exeter             | 4             | 6              | Vengeance          | 4             | 18          |
| Queen              | 1             | 2              | Worcester          | 3             | 5           |
| Shrewsbury         | 3             | 6              | Elizabeth          | —             | 7           |
| Berwick            | 10            | 11             | Defiance           | 8             | 17          |
| Stirling Castle    | 2             | 11             | Robust             | 5             | 17          |
| Courageux          | 6             | 13             | Formidable         | 16            | 49          |
| Thunderer          | 2             | 5              | Ocean              | 2             | 18          |
| Vigilant           | 2             | 3              | America            | 1             | 17          |
| Sandwich           | 2             | 20             | Terrible           | 9             | 21          |
| Valiant            | 6             | 26             | Egmont             | 12            | 19          |
| Victory            | 11            | 24             | Ramilies           | 12            | 16          |
| Foudroyant         | 5             | 18             |                    |               |             |
|                    |               |                |                    | Total 133     | 373         |

*Officers wounded.*

Lieut. Nicholas Clifford, 2d of the Formidable.

Lieut. William Samwell, 3d of the Shrewsbury.

Lieut. John M'Donald, of the marines—Prince  
George.

Surgeon of the Elizabeth.

A. KEPPEL.

London, August 19, 1778.

The following paragraph appeared in a ministerial paper of Tuesday last :

" It is strange that Admiral Keppel's conduct should so engross the public attention, that while one party is *extolling*, and another reprobating it, they should both forget to bestow the best deserved encomiums on Sir Hugh Palliser. That gallant officer displayed both *conduct* and *courage* in the late engagement : he was found to be in almost every post, where the danger of this country required his assistance ; and his intrepidity in running in between some of our disabled ships, and the enemy, prevented them from sinking or from falling into the hands of the French."

Next day the following answer appeared.

" Sir H. P——'s conduct saved the whole French fleet. He had the best manned ship in the fleet, and lay to, though to windward of the whole, his fore-top sail unbent, for above four hours, before he attempted to bring another to the yard. Our gallant Ad—— absolutely sent a frigate to tell him " he only waited for him to bear down to his station to engage again." And the *signals* for five or six particular ships of his division were repeatedly made to make more sail."

The following paper being delivered to me, I think it necessary you should impart it to the public, that the *Whig Admiral*, at the head of our fleet, should no longer be liable to such treachery, and which is the more necessary, as *Jemmy Twitther's* puffers have been very industrious to cry down the *Whig Admiral*, that he might raise his minion the Vice Admiral upon the other's ashes.

" The principal cause of Mr. Keppel's not re-attacking the French at half past three in the afternoon (being at that time totally refitted from the damages sustained

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sustained in the morning) was Sir H. P——'s not joining him, agreeable to signal from the line, he being at that time four miles to the windward with his division. Mr. Keppel observing a non-compliance, made other signals for the respective ships of Sir H——'s division to bear down to him, which in complying with, Sir H—— called them back under the wake. Captain Laforest, of the Ocean, distressed how to act in consequence of this counter order, sailed up to Sir H——, to ask whom he was to obey. Mr. Keppel still observing that division continuing to windward, and neither of them obeying the signal, made one for the Fox, Captain Windsor, to come to him, and desired him to go with his compliments to Sir H——, to inform him that his signal had been unremittedly kept up for him and his division to form the line; he supposed they did not see it, as they had not complied with it, and that they only waited for him and his division's coming down, to renew the action. It was night before the division did come down, so the occasion was lost, by the French disappearing next morning. Mr. Keppel's situation is not to be expressed, when he found himself defeated in the fair prospect he had. *These facts will appear in every log book in the fleet*; so that if an enquiry into this affair was to take place, his conduct will bear the strictest scrutiny, as hitherto no visible reason has appeared as an excuse in Sir H—— P—— for not complying. Sir Robert Harland's division, and Mr. Keppel's, who had sustained, to all appearance, as much damage as Sir H——'s, those two divisions were refitted for action at the time above mentioned, and Sir H—— had not repaired his, *lying all the time with his fore-topsail shattered, and not refitted.* The damage sustained of loss of men on board Sir H——, was chiefly owing to cartridges blowing up between decks."

Having



## SIR HUGH PALLISER'S ANSWER.

Having seen since my late arrival at Portsmouth, a very scandalous paragraph in a Morning Paper of the 15th of last month, [*the preceding paragraph*] directly charging me with being the cause of Admiral Keppel's not re-attacking the French fleet, in the afternoon of the 27th of July last, containing many gross falsehoods, calculated expressly for the purpose of wounding my reputation, and to represent me in a culpable light to the whole nation; and being well informed that injurious reports of the like nature have been industriously propagated for the same purpose by some malignant wicked people, it becomes necessary for me, in order to vindicate my own conduct, to publish such particulars relating to the battle on that day, as may enable the public, who have a right to be fully informed of the truth in a matter of so much importance to them, to judge whether I was the cause of the French fleet not being re-attacked on that afternoon: I therefore request you will publish the enclosed paper, containing the facts necessary to be known, for justifying me from the said foul aspersions. After the nation is in possession thereof, if any individual, or if parliament, or the nation at large, call for a public enquiry, I am ready to stand the issue of such enquiry, but I shall not answer any questions or queries in news-papers, or otherwise. Your's, &c.

*Pall-mall, Nov. 4.*

HUGH PALLISER.

At about six o'clock in the morning on the 27th of July, the British fleet was upon a wind on the larboard tack, lying up about W. by N. my division leading on that tack, the French fleet was to windward; at half past six a signal was made for several of the ships of my division to chase to windward, which occasioned them to stretch far a-head.

At

At ten the whole fleet tacked together per signal, and stood towards the French fleet, who soon after were plainly discovered to be on the larboard tack, in a regular well formed close line of battle a-head; our fleet approached them without any order or line of battle. The ships of my division were separated from me by the above signal; the ships of the other two divisions, though not in a regular line, appeared to be nearly so, and in a collected body, excepting the Duke, who was far to leeward.

About eleven a firing began between the headmost ships in our van and some ships in the van of the enemy's fleet, which became general, as our ships got up in succession; each proceeding from that part of the enemy's fleet, which they respectively fetched, on towards the enemy's rear, engaging as they advanced along their line.

Admiral Keppel with his division fetched the French Admiral, and there began to engage.

About noon, in the Formidable, I fetched within random shot of the Duke de Chartres ship, who commanded the van division of the enemy's fleet; he fired many broadsides at the Formidable, but being at too great a distance, she did not return a single shot, but reserved her fire till she came within point blank shot of the ship she could fetch: there I began to engage, and passed on to the French Admiral in the centre of the line, engaging within musquet shot, and alone; having no second either a-head, or a-stern, the ships of my division being scattered and separated from me by signal as aforementioned: however, they all got into action, and though not in a connected body with their admiral, did their duty so well, that they suffered the most, as appears by the damages sustained by those ten ships, being equal to the damages sustained by all the twenty ships that composed the other two divisions

divisions. This was occasioned by the regular and connected line of the enemy's ships being preserved; whereby they were enabled to employ a greater force upon each ship in the rear of our fleet, who were separated at a considerable interval from each other, occasioned by the before-mentioned signal to chase, and from hence arose the numerous damages which the *Formidable* sustained, being subjected to the angular fire of a long range of the enemy's ships as she continued her progress along their line. This comparison of the damages appears by the account published from Admiral Keppel's letter of the killed and wounded, which was as follows:

Admiral Keppel's division, 43 killed, and 142 wounded.

Vice-Admiral Sir Robert Harland's division, 22 killed, and 45 wounded.

Vice-Admiral Sir Hugh Palliser's division, 68 killed, and 186 wounded.

By the blowing up of some powder on board the *Formidable*, about twenty men were hurt, but I do not recollect that any one was killed thereby. The accident was occasioned by a man having a cartridge under his arm at the time he fired his gun. It is said the like accident happened on board other ships.

I proceeded on with the *Formidable* to the sternmost of the enemy's ships, keeping my mizen topsail aback all the time, and engaged every ship within musquet shot, the two last of which appeared not to have sustained any damage from any of our ships that had passed before us, not a shot-hole being to be seen in their sails: the *Formidable* brought down one of the enemy's ships main-yard, which ship appeared to be otherwise much damaged; for she quitted their line, and went off before the wind, attended by a frigate,

Between

Between two and three o'clock, I had passed the sternmost ship of the enemy's line; at this time Admiral Keppel was at a distance, coming up, and a number of ships about him, and, I think, with the signal for battle flying. I concluded he was advancing to renew the battle: Vice Admiral Sir Robert Harland was, with several ships, to windward of the rear of the enemy. I immediately wore the Formidable, and laid her head towards the enemy again, in order to endeavour to get into battle again, expecting it to be renewed when Admiral Keppel came up. We were then exactly in a line with the enemy's line, and at about random shot from their sternmost ships. In this situation the Formidable lay a considerable time, no other ship near her. Soon after this the van and centre of the enemy broke their line, and appeared to be in confusion; some with their heads one way, some another.

The Victory shortened sail, and unbent her main-top sail; and about this time some of the enemy's ships appeared to be filing off towards us, and two or three of their fresh ships standing directly for the Formidable; I therefore wore again, and laid her head towards Admiral Keppel to meet him;—then the enemy's ships edged away, and pointed to leeward of our fleet, and began to form the line in that direction.

When the Victory and Formidable met, it was past three o'clock; the Victory passed the Formidable to windward, wore, passed under her stern, run down to leeward of her, and made sail a head; this left the Formidable at a distance *a-stern*, and somewhat to windward of the Victory's wake, though the least so of any ship when she first hauled the wind. A signal was made for ships to windward to bear down into the Admiral's wake, which signal I repeated, for it was understood to be for Vice Admiral Sir Robert



Harland and his division to bear down ; who was then far to windward, and he accordingly did bear down, and brought up in the Admiral's wake, then nearly a-breast of the Formidable, and a little way to leeward of her.

At this time it was apparent to the rest of the fleet, (if it was not so to those in the Victory) that the Formidable was not in a manageable condition ; we were then employed in knotting, splicing, &c. to get the ships under command, and to be able to make sail to get up with the Admiral, who was making sail on the starboard tack, the French fleet then a-stern doing the same.

After Sir Robert Harland had been some time in the Admiral's wake, he with his division (by orders it is said) crowded all the sail they could carry, to get ahead of the Admiral's division.

Late in the evening we saw the Admiral had made the signal for some particular ships of my division, (not the Formidable's, her incapacity being so apparent) all which signals I repeated ; the Ocean, and such of them as were under command, bore down according to the signal ; others were not in a governable condition, and being employed as I was, in knotting, splicing, &c. did not immediately bear down. It is to be observed, that the Formidable, and the ships of my division, were the last that came out of the engagement, were the most damaged, and had had least time to refit ; and that it is the disabled ships of my division that are alluded to in Admiral Keppel's letter, where he says, " The object of the French seemed to be the disabling of the King's ships in their masts and sails ; in which they so far succeeded, as to prevent many of the ships of my fleet being able to follow me when I wore to stand after the French fleet, &c."

If,

If, according to the preceding paragraph, extracted from the Admiral's own account, they were unable to follow him, going towards the enemy, they certainly were equally unable to follow him, when he immediately made sail the contrary way, and it was unreasonable to suppose them capable of taking, and keeping their stations in a line of battle, at a cable's length asunder, whilst in that condition.

Can any one possibly believe (as the dark assassin asserts) that Admiral Keppel called those same crippled ships to him, in order to renew the attack, and at the moment when he had just sent Sir Robert Harland away from him, with his division of fresh ships, who had been the longest out of the action, and had had the most time to repair their damage? besides, the Admiral's letters declare, that it was not his intention to re-attack before the next morning.

At night, the Fox frigate, Capt. Windsor, came to the Formidable, with a message from the Admiral to me, "That he wanted the ships of my division to come into his wake;" but said not a word about his waiting for them, in order to renew the attack, as is falsely asserted. He was answered by myself, from the stern-gallery, in the following words, "Acquaint the Admiral I have repeated his signal for it;" and was going to say, "Tell him that the moment my ship is under command, I will endeavour to get nearer to him." But the company of the frigate interrupted, by giving three cheers, which the Formidable's people returned. It then blowed fresh, was dark, and the frigate passed so quick, that there was not time to say any thing more which could have been heard.

The night was cloudy, with rain, and very dark; it required all the tattered sails the Formidable could possibly set in the afternoon, and in the night, to keep way with the Admiral, so that we could only spare one

top-sail at a time to be unbended, in order to bend others. After we had knotted and spliced as much rigging as we could to secure the masts, and make it safe to set sail upon them, and having shifted a fore and mizen top-sail, the ship was then under command, and, long before day-light, the Formidable, and every ship of my division, were in the Admiral's wake, expecting to engage immediately at day-light, but the enemy's fleet were gone off.

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A R E P L Y.

To Sir H—— P——<sub>R</sub>.

Your letter, prefacing the account of the action, is too curious to pass unobserved. Sir H—— P——, that man of condescension, to become a writer in an Evening Post, is matter of some surprize, especially when such honourable mention had been made of him in the Gazette, and no accusation of any kind against him, except his own construction of an anonymous paragraph in a public paper. It reminds me of an old vulgar adage, that "the galled horse will wince."

The account states, that our fleet approached that of the enemy without any order or line of battle, and that the ships of your division were separated from you by a prior signal, seeming to insinuate what indeed you afterwards advance, that you were alone. Were the Ocean, Terrible, Robuste, and Defiance, more separated from you than they had generally been during the cruize.

The account states, That Admiral Keppel fetched the French Admiral, and there began to engage; and that you in the Formidable fetched the Duke of Chartres, who fired at you, but that you did not return his fire, as you were only in random shot. If you mean you were more fired at than the center ships, you go from the truth; many reasons are to be given to prove the contrary. The Foudroyant, Victory, and

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and Prince George, which formed the center, were likewise fired at, and struck by several, (not from the van commanded by the Duke of Chartres, they allow he kept at a distance) nor did they on that account return his fire.

But what you mean when you say you engaged alone, having no ship a-head or a-stern, I leave to the Captains of the Ocean, Robuste, Terrible, and Defiance to answer. The center ships *thought they saw* the Ocean a-head of you, and several ships a-stern of you; let them and you settle the distance.

The difference you alledge in killed and wounded, is easily accounted for; and though I would suppose *you was only misinformed*, when you say, that about twenty men were wounded by the accident of the blowing up of your own powder, yet when you write to the public you should be more accurate. The hospital books at Plymouth will prove receiving twenty-seven blown up by powder from the Formidable; and other accounts, which perhaps you have taken care should not be so easily proved, stated nine men killed, and who died of their wounds in consequence of that accident. Some other accounts, in your division, if examined, would appear, *as you say*, to have arose from accident—one ship firing into another by accident, &c. &c.

As to the Formidable carrying away the main-yard of one of the enemy's ships, though I think it very difficult in ships passing on different tacks to ascertain precisely the damage any one in particular had done the enemy, yet I am far from denying you the credit of a chance shot, that might come from the Formidable as likely as from the Ocean; but I will say a man must be hard drove who pompously claims the merit of such signal service. Three other ships of your own division claim the merit of this famous main-yard, and will dispute the laurel with you.

I should



I should suppose your watch was down, or you had not turned your glasses, when you say, "between two and three, I had passed the sternmost of the French fleet;" though, jesuitically speaking, you may mean you had passed them a long time.

You say a signal was made for the ships to bear down, which you repeated to Sir Robert Harland. I shall only say, you would have done better to have obeyed it, and have left Sir Robert Harland, who evidently did not take his motions *from you*, to have seen and understood the Admiral's directions through his own medium.

You say the Formidable was not in a manageable state; but you forgot, in a former paragraph, that you wore twice without a signal after the action; but now when the signal was made, you became quite unmanageable. I cannot doubt your words, but am at a loss for the cause.

The Formidable appeared to have her fore-top-sail much torn, which was afterwards unbent; but there was a jibb and stay sails, neither of which were set, nor the least endeavour made to bear down. Any other cause than the fore-top-sail being unbent, was not visible to the center ships to prevent the Formidable from going into her station.

The Admiral is the best judge which were the ships he meant that were unable to follow him, when he wore to stand towards the French fleet; some officers are of opinion it was the Robuste and Ramilies, who, with two other ships, appeared to have suffered greatly in their sails and rigging; and though the two ships named were of your division, they were on the lee bow, and consequently not with you to windward, or could be intended in the signal for ships to windward to bear down. As to the ships to windward with you being disabled, that certainly did not appear to the

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center ships; and that they were not, has been fully declared by several officers of ships near you.

You say, at night the Fox frigate came to the Formidable, with a message from the Admiral. It was summer time, long days, and I leave the world to judge if it is night at four o'clock at that time of the year.

Your answer was, "tell the Admiral I have repeated his signal for the ships to bear down." What answer was that? Your repeating the signal and not obeying, was as ridiculous as a fantastical lady ordering her coach to the door, to go to the play, and sitting in her room till it was over. As to what *you* was going to say, let those give credit that please: what you was going to say, or what you was going to do, is too childish language for the public, who only want to know what you *did* say, or what you *did* do. As the night was dark and cloudy, so you shewed no lights; and that you was at any time of the night in the Admiral's wake, was not seen by the Foudroyant, Prince George, Bienfaisant, or Vengeance, ships whose stations were immediately a-stern of the Admiral, and *who were there.*

[Admiral Keppel returned to Plymouth, after his first cruize, on the 30th of July, 1778, with thirty ships. He sailed again on the 20th of August from Plymouth, on his second cruize; and though it was well known the French had a naval superiority, yet, notwithstanding the length of time, to refit, and provide a proper reinforcement, he was obliged to put to sea again, the French fleet having sailed a second time, with *only* twenty-nine (the same ships) sail of the line. In a few days he was joined by one more; and in a few days after that, he was joined by two more of the line. During this second cruize the two fleets did not meet. The French returned to Brest on the 17th of September, and Admiral Keppel came to Spithead on the 31st of October.]

L I S T

# LIST OF THE FLEET, AT SAILING. LINE OF BATTLE.

Monarch to lead on the starboard tack—Ramilies on the larboard tack.

| Rates. | Ships.          | Guns. | Men. | Commanders.                                                                                          | Frigates.    | Guns.             |
|--------|-----------------|-------|------|------------------------------------------------------------------------------------------------------|--------------|-------------------|
| 3      | Monarch         | 74    | 600  | Capt. Rowley                                                                                         |              |                   |
|        | Shrewsbury      | 74    | 600  | Marshall                                                                                             |              |                   |
|        | Hector          | 74    | 600  | Sir John Hamilton                                                                                    |              |                   |
|        | Exeter          | 64    | 500  | Capt. Nott                                                                                           |              |                   |
|        | Centaur         | 74    | 600  | Cosby                                                                                                |              |                   |
| 2      | Duke            | 90    | 750  | Ross                                                                                                 |              |                   |
|        | Queen           | 90    | 772  | Sir Robert Harland, Bart.<br>Vice Admiral of the Red,<br>Commander in the 2d post.<br>Capt. Prescott | Fox          | 28 Hon. — Wind    |
| 3      | Cumberland      | 74    | 600  | Peyton                                                                                               |              |                   |
|        | Berwick         | 74    | 600  | Hon. Keith Stewart                                                                                   |              |                   |
|        | Stirling Castle | 64    | 500  | Sir Charles Douglas, Bart.                                                                           |              |                   |
|        | Thunderer       | 74    | 600  | Hon. Boyle Walsingham                                                                                |              |                   |
|        | Courageux       | 74    | 600  | Right Hon. Lord Mulgrave                                                                             |              |                   |
| 2      | Sandwich        | 90    | 750  | Capt. Edwards                                                                                        |              |                   |
| 3      | Valiant         | 74    | 600  | Hon. Leveson Gower                                                                                   | Proserpine   | 28 — Sutton       |
|        |                 |       |      | Hon. Augustus Keppel,                                                                                | Andromeda    | 32 a fireship     |
|        |                 |       |      | Admiral of the Blue,                                                                                 | Pluto        | 32 — Marshall     |
| 1      | Victory         | 100   | 894  | Commander in Chief.                                                                                  | Arethusa     | 32 a fireship     |
|        |                 |       |      | Rear Admiral Campbell                                                                                | Vulcan       | 32 — Montagu      |
|        |                 |       |      | Capt. Falconer                                                                                       | Medea        | a cutter          |
|        |                 |       |      | Capt. Jervis                                                                                         | Rattle snake |                   |
| 3      | Foudroyant      | 80    | 650  | Sir John Lindsay, K. B.                                                                              |              |                   |
| 2      | Prince George   | 90    | 750  | Capt. M' Bride                                                                                       |              |                   |
| 3      | Bienfaisant     | 64    | 500  | Clements                                                                                             |              |                   |
|        | Vengeance       | 74    | 600  | Kingmill                                                                                             |              |                   |
|        | Vigilant        | 64    | 500  |                                                                                                      |              |                   |
|        | Worcester       | 64    | 500  | Capt. Robinson                                                                                       |              |                   |
|        | Elizabeth       | 74    | 600  | Hon. F. Maitland                                                                                     |              |                   |
|        | Defiance        | 64    | 500  | Capt. Goodall                                                                                        |              |                   |
|        | Robuste         | 74    | 600  | Hood                                                                                                 |              |                   |
| 2      | Formidable      | 90    | 772  | Sir Hugh Palliser, Bart.<br>Vice Admiral of the Blue,<br>Commander in third post.<br>Capt. Bazely    | Milford      | 32 Sir W. Burnaby |
|        |                 |       |      | Laforey                                                                                              |              |                   |
| 3      | America         | 90    | 750  | Right Hon. Lord Longford                                                                             |              |                   |
|        | Egmont          | 64    | 500  | Capt. Allen                                                                                          |              |                   |
|        | Terrible        | 74    | 600  | Sir Richard Bickerton, Bt.                                                                           |              |                   |
|        | Ramilies        | 74    | 600  | Hon. Robert Digby                                                                                    |              |                   |

The Resolution and Defence of 74 guns each, sailed afterwards, and joined the fleet.

*Extract from the Debates of the House of Commons;  
on the second Day of December, 1778.*

*Admiral Keppel.* He could not, he said, sit silent when he heard himself called upon so directly, however disagreeable it might be to him, to say any thing in that House, respecting the affair of July 27; an affair in which his character as an officer, was so materially concerned. It had been said in that House, on a preceding occasion, (Thursday 26th, on the address by Governor Johnstone) that if Admiral Keppel were to go through the business of that day again, he would *not* fight the French in the same manner; he desired the gentleman to know, that Admiral Keppel was then speaking, and that Admiral Keppel declared, if he was to go over the business of the 27th of July again, he would have conducted himself in the same manner. He said every thing that could be done, had been done; and he was happy to say the British flag had not been tarnished in his hands. He felt himself perfectly easy on that head, and should never be ashamed of his conduct on the day alluded to. The oldest and most experienced officers in his Majesty's navy, in every engagement, saw something which they were before unacquainted with; and that day presented *something new*. He impeached no man of neglect of duty, because he was satisfied that the officer alluded to [Sir Hugh Palliser] had manifested no *want* of what was most essential of in a British seaman—courage.

He said, he had been much surprized, when an officer under his command had made an appeal to the public, in a news-paper, signed with his name, before any accusation had been made against him, and which tended to render him odious and despicable in the eyes of his countrymen. He confessed he was so

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shocked,



shocked, that he resolved never to set his foot aboard ship again, because he thought there was an end of all obedience and command. However, upon reflection, and when his first emotions had subsided, he hoped matters might be properly explained; but till that event took place, he informed the noble Lord who presided at the Admiralty Board, that he never could sail with the gentleman alluded to. He believed the Vice-Admiral was no stranger from whence the anonymous attack came. He had himself been frequently the subject of news-paper abuse, but he had not appealed to the public, nor refused to serve his country when his services were demanded. He did not suspect ministers to be the authors or promoters of the abuse which appeared in the public prints; they on the contrary seemed his friends, caressed and smiled upon him; but if any of them were capable of cutting his throat, of vilifying and secretly aspersing him, he did not suppose they were near him; if they were, he was perfectly indifferent, as to their smiles or their frowns, and regardless of every consequence which might follow from either, and was still ready to serve his country, with the warmest zeal and to the full extent of his abilities.

*Sir Hugh Palliser* declared, he was so conscious of not having been any hindrance to a re-action with the Brest fleet on the 27th of July, that he was equally indifferent, with the Hon. Admiral, how soon an enquiry was set on foot; on the contrary, however, it might be generally thought more adviseable to urge one, for the sake of the public, it was his interest to wish one, because he was certain it would then come out, that he had done his duty in every respect, both as an officer and a man. He said the Hon. Admiral who spoke last, seemed to speak with a kind of reserve, as if there was something behind; he heartily wished

wished him to speak out, that knowing fully what was imputed to him, either on the score of neglect, inactivity, or want of judgment, he might have an opportunity of fairly answering the charge, and abiding by the judgment of the committee, whether he was or was not criminal. He had discovered, from what the Admiral had just said, that the principal matter which weighed against him in the Admiral's mind was the publication in the news-papers; a publication which he had signed with his name, and by which he would abide. If it was imprudent, if it was wrong, the consequence was to himself. The Honourable Admiral had been kind enough to do him justice on the essential point of courage; he should be nevertheless exceedingly uneasy if he was thought deficient in other respects as an officer. It was on that very account that he had appealed to the public; he heard when he came on shore, after the affair of the 27th of July, that it had been insinuated, that he was a hindrance to a re-action with the French fleet; an unauthenticated insinuation of neglect of duty, was a severer stroke to an officer than any direct terms of accusation, because it was more difficult to remove entirely; he therefore, to clear his honour, which he felt attacked, waited on the Commander in Chief to have the matter set right, and to have the insinuation wiped away: he could get no redress. To say any thing against a friend, was, to a man of sensibility, the most disagreeable thing in nature; but where an officer's reputation was at stake, the removing an unjust stigma was certainly the first object; he had therefore appealed to the public, he had stated facts to them, and by those facts he would stand or fall. With regard to the report of not obeying signals, it was a false report; but even were it true, the public service could not have been affected by it, considering

the circumstances of the day. If there was any rea-  
ground of accusation, why not make it fairly and  
openly? If not, why insinuate that he had been want-  
ing in point of conduct, though a testimony was given  
in favour of his courage. This he said was a lan-  
guage extremely different from that of the Admiral's  
dispatch, containing an account of the action, in  
which he informed the Admiralty Board, of the spirited  
and gallant conduct of all the officers under his com-  
mand. On the whole, he despised all the means re-  
sorted to, both within and without doors, to vilify and  
traduce him, as a professional man; but conscious of  
his innocence (though he did not look upon the pre-  
sent as a season fit for such discussion, lest the public  
service might suffer by it) he feared neither reports  
nor assertions, a parliamentary enquiry, nor a public  
trial.

*Admiral Keppel.* The Vice Admiral had defended  
his appeal to the public on the ground, that his  
conduct had been grossly misrepresented in the public  
prints; he should nevertheless continue to think, that  
such an appeal was extremely improper: it contained  
many matters objectionable in their nature, besides  
what immediately related to his own justification,  
sufficient to fix his former resolution, never to go to  
sea again with the Vice Admiral of the Blue.

As to any insinuations or indirect charges, he knew  
not whence they came; for his part, he had made  
none; nor did he know any part of the Vice Admiral's  
conduct deserving of censure; but his seeing the name  
of "Hugh Palliser," signed to a letter in the Morning  
Post.

The Vice Admiral had quoted his dispatch from  
aboard the Victory, containing a full approbation of  
the conduct of all the officers present that day, in  
which he was included. Most certainly, the conclu-  
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sion was fair; and he was again ready to repeat it, and point that testimony particularly, as well as generally.

The Vice Admiral had alluded to signals, and said that it was no fault of his, that the fleet of France was not re-attacked. As to that, he could only say, that he presumed every inferior officer was to obey the signals of his commander; and now, when called upon to speak out, he would inform the house and the public, that the signal for coming into the Victory's wake, was flying from three o'clock in the afternoon till eight in the evening unobeyed; at the same time he did not charge the Vice Admiral with actual disobedience. He doubted not, but if an enquiry should be thought necessary, that he would be able to justify himself, because he was fully persuaded of his personal bravery.

He repeated, that he was his country's friend, and was ready to do every thing in his power to promote its interest, and advance its honour; farther than that, he had nothing to do with administration, and was little solicitous about any matter, but what related to a due performance of his duty. He was happy to think, that the British flag had suffered no disgrace while intrusted to his care, nor he hoped never would.

In consequence of what passed in the House of Commons, as above, Sir Hugh Palliser drew up a charge against Admiral Keppel, which he exhibited at the Board of Admiralty, on the 9th of December, 1778.

The following is an Authentic Copy of THE CHARGE:

*Charge of Misconduct and Neglect of Duty, against the Honourable Admiral Keppel, on the 27th and 28th of July, 1778, in divers Instances, as undermentioned:*

I. That on the morning of the 27th of July, 1778, having a fleet of 30 ships of the line under his command,  
and



and being then in the presence of a French fleet of the like number of ships of the line, the said Admiral did not make the necessary preparation for fight, did not put his fleet into a line of battle or into any order proper either for receiving or attacking an enemy of such force: but on the contrary, although his fleet was already dispersed and in disorder, he, by making the signal for several ships of the Vice Admiral of the Blue Division, to chase to windward, encreased the disorder of that part of his fleet, and the ships were in consequence, more scattered than they had been before; and whilst in this disorder, he advanced to the enemy, and made the signal for battle: That the above conduct was the more unaccountable, as the enemy's fleet was not then in disorder, nor beaten, nor flying, but formed in a regular line of battle on that tack which approached the British fleet, all their motions plainly indicating a design to give battle, and they edged down and attacked it whilst in disorder. By this unofficer-like conduct a general engagement was not brought on, but the other Flag Officers and Captains were left to engage without order or regularity, from which great confusion ensued: some of his ships were prevented getting into action at all, others were not near enough to the enemy, and some from the confusion fired into others of the King's ships, and did them considerable damage: and the Vice Admiral of the Blue was left alone to engage, singly and unsupported: in these instances the said Admiral Keppel negligently performed the duty imposed on him.

II. That, after the Van and Center Divisions of the British fleet passed the rear of the enemy, the Admiral did not immediately tack and double upon the enemy, with these two divisions, and continue the battle, nor did he collect them together at that time, and keep so near the enemy to renew the battle as soon as it might be

be proper : on the contrary, he stood away beyond the enemy to a great distance before he wore to stand towards them again, leaving the Vice Admiral of the Blue engaged with the enemy, and exposed to be cut off.

III. That after the Vice Admiral of the Blue had passed the last of the enemy's ships, and immediately wore, and laid his own ship's head towards the enemy again, being then in their wake, and at a little distance only, and expecting the Admiral to advance with all the ships to renew the fight, the Admiral did not advance for that purpose, but shortened sail, hauled down the signal for battle, nor did he at that time, or at any other time whilst standing towards the enemy call the ships together, in order to renew the attack, as he might have done, particularly the Vice Admiral of the Red and his division, which had received the least damage, had been the longest out of action, were ready and fit to renew it, were then to windward, and could have bore down and fetched any part of the French fleet, if the signal for battle had not been hauled down, or if the said Admiral Keppel had availed himself of the signal appointed by the thirty-first article of the Fighting Instructions, by which he might have ordered those to lead who are to lead with the starboard tacks on board, by a wind, which signal was applicable to the occasion for renewing the engagement with advantage, after the French fleet had been beaten, their line broken, and in disorder.—In these instances he did not do the utmost in his power to take, sink, burn, or destroy the French fleet that had attacked the British fleet.

IV. That instead of advancing to renew the engagement as in the preceding articles is alledged, and as he might and ought to have done, the Admiral wore and made sail directly from the enemy, and thus he led

led the whole British fleet away from them, which gave them the opportunity to rally unmolested, and to form again into a line of battle, and to stand after the British fleet. This was disgraceful to the British flag, for it had the appearance of a flight, and gave the French Admiral a pretence to claim the victory, and to publish to the world that the British fleet ran away, and that he pursued it with the fleet of France and offered it battle.

V. That in the morning of the 28th of July, 1778, when it was perceived that only three of the French fleet remained near the British, in the situation the whole had been in the night before, and that the rest were to leeward at a greater distance, not in a line of battle, but in a heap; the Admiral did not cause the fleet to pursue the flying enemy, nor even to chase the three ships that fled after the rest; but, on the contrary, he led the British fleet another way directly from the enemy.—By these instances of misconduct and neglect, a glorious opportunity was lost of doing a most essential service to the state, and the honour of the British Navy was tarnished.

H. PALLISER.

On the 14th of December, 1778, Sir William Meredith moved in the House of Commons, that the *time* when Sir Hugh Palliser exhibited his charges against Admiral Keppel at the Board of Admiralty, and the time when the Board sent notice to Admiral Keppel that they had ordered a Court Martial upon him, might be laid before the House.

In consequence of this motion, Lord Mulgrave, a few days afterwards, laid the following paper upon the table:

*Admiralty Office, Dec. 17, 1778.*

The charge exhibited by Vice Admiral Sir Hugh Palliser against the Hon. Admiral Keppel, was received

ceived in a letter from the Vice-Admiral, dated the 9th of December, 1778, at about three o'clock the same day (P. M.), and notice was given thereof to Admiral Keppel, in a letter from this office, at half past ten o'clock the same evening.

On the 17th of December, Admiral Pigot brought in a bill to try Admiral Keppel on shore; which passed.

On the 30th of December, the Duke of Bolton delivered to his Majesty, in his closet, at St. James's, the following Representation:

TO THE KING.

WE the subscribing Admirals of your Majesty's Royal Navy, having hitherto on all occasions, served your Majesty with zeal and fidelity, and being desirous of devoting every action of our lives, and our lives themselves, to your Majesty's service and the defence of our country, think ourselves indispensibly bound by our duty to that service and that country, with all possible humility, to represent to your wisdom and justice,

That Sir Hugh Palliser, Vice Admiral of the Blue, lately serving under the command of the Honourable Augustus Keppel, did prefer certain articles of accusation, containing several matters of heinous offence against his said Commander in Chief, to the Lords Commissioners for executing the Office of Lord High Admiral of Great Britain, he the said Sir Hugh Palliser being himself a Commissioner in the said Commission. This accusation he the said Sir Hugh Palliser withheld from the twenty-seventh day of July last, the time of the supposed offences committed, until the ninth day of this present December, and then brought forward for the purpose of recrimination against charges conjectured by him the said Sir Hugh Palliser, but which in fact were never made.

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That



That the Commissioners of the Admiralty, near five months after the pretended offences aforesaid, did receive from their said colleague in office, the charge made by him against his said Commander, and without taking into consideration the relative situation of the accuser and the party accused, or attending to the avowed motives of the accusation, or the length of time of with-holding, or the occasion of making the same, and without any other deliberation whatever, did, on the very same day on which the charge was preferred, and without previous notice to the party accused of an intention of making a charge against him, give notice of their intending that a Court Martial should be held on the said Admiral Keppel, after forty years of meritorious service, and a variety of actions in which he had exerted eminent courage and conduct, by which the honour and power of this nation, and the glory of the British Flag, had been maintained and increased in various parts of the world.

We beg leave to express to your Majesty our concern at this proceeding, and to represent our apprehensions of the difficulties and discouragements which will inevitably arise to your service therefrom; and that it will not be easy for men, attentive to their honour, to serve your Majesty, particularly in situations of principal command, if the practice now stated to your Majesty be countenanced, or the principles upon which the same has been supported shall prevail with any Lord High Admiral, or with any Commissioner for executing that office.

We are humbly of opinion that a criminal charge against an officer (rising in importance according to the rank and command of that officer) which suspends his service to your majesty, perhaps in the most critical exigencies of the public affairs, which calls his reputation

reputation into doubt and discussion, which puts him on trial for his life, profession and reputation, and which, in its consequences, may cause a fatal cessation in the naval exertions of the kingdom, to be a matter of the most serious nature, and never to be made by authority but on solid ground, and on mature deliberation. The honour of an Officer is his most precious possession and best qualification; the public have an interest in it; and whilst those under whom we serve countenance accusation, it is often impossible perfectly to restore military fame by the mere acquittal of a Court Martial. Imputations made by high authority remain long, and affect deeply. The sphere of action of Commanders in Chief is large, and their business intricate, and subject to great variety of opinion; and before they are to be put on the judgment of others for acts done upon their discretion, the greatest discretion ought to be employed.

Whether the Board of Admiralty hath by law any such discretion, we, who are not of the profession of the law, cannot positively assert; but if we had conceived that this Board had no legal use of their reason in a point of such delicacy and importance, we should have known on what terms we served. But we never did imagine it possible, that we were to receive orders from, and be accountable to those who, by law, were reduced to become passive instruments to the possible malice, ignorance, or treason of any individual who might think fit to disarm his Majesty's Navy of its best and highest officers. We conceive it disrespectful to the laws of our country to suppose them capable of such manifest injustice and absurdity.

We therefore humbly represent, in behalf of public order, as well as of the discipline of the Navy, to your Majesty, the dangers of long concealed, and afterwards precipitately adopted charges, and of all recriminatory

accusations of subordinate Officers against their Commanders in Chief; and particularly the mischief and scandal of permitting men, who are at once in high civil office, and in subordinate military command, previous to their making such accusations, to attempt to corrupt the public judgment, by the publication of libels on their Officers in a common news-paper, thereby exciting mutiny in your Majesty's Navy, as well as prejudicing the minds of those who are to try the merits of the accusation against the said superior Officer.

|                 |                 |
|-----------------|-----------------|
| HAWKE,          | BRISTOL,        |
| JOHN MOORE,     | JAMES YOUNG,    |
| BOLTON,         | MATTHEW BARTON, |
| SAMUEL GRAVES,  | FRANCIS GEARY,  |
| HUGH PIGOT,     | SHULDHAM,       |
| ROBERT HARLAND, | CLARK GAYTON,   |

### W A R R A N T.

By the Commissioners for executing the Office of Lord High Admiral of Great Britain and Ireland, &c.

WHEREAS we have issued our order to Sir Thomas Pye, Admiral of the White Squadron of his Majesty's Fleet, to hold a Court Martial at Portsmouth on Thursday next, the 7th of this Month, for the Trial of the Honourable Augustus Keppel, Admiral of the Blue Squadron of his Majesty's Fleet, upon a Charge exhibited against him by Vice Admiral Sir Hugh Palliser, for misconduct and neglect of duty on the 27th and 28th of July last, in sundry instances therein mentioned; and whereas we think proper that you should take the said Admiral, the Honourable Augustus Keppel, into your custody, and attend him to and from the said Court; you are hereby required and directed to repair to Admiral Keppel, and acquaint

quaint him therewith: But as it is not our intention that he should be put under any greater inconvenience or confinement than is absolutely necessary, you are to take his honour for his appearance at Portsmouth on or before the said 7th day of this Month, and on his arrival, attend him to and from the Court during the continuance of his trial, and then to dispose of him as the Court Martial shall direct. For which this shall be your Warrant.

Given under our Hands and Seal of the Office of Admiralty, this 1st Day of January, 1779.

SANDWICH, T. BULLER, LISBURNE.

To William Brough, Esq;  
Marshal of the Admiralty, or his Deputy.

By Command of their Lordships,

PHIL. STEVENS.

THE



## T H E T R I A L.

## F I R S T D A Y.

*Thursday, January 7, 1779.*

**A**T nine o'clock in the Morning, Admiral Pye, as Admiral of the White, and President of the Court Martial, hoisted his flag on board the Britannia.

At a quarter after nine o'clock, the Union flag was hoisted in the larboard mizen shrouds as the signal for a Court Martial, and the royal standard was hoisted in the starboard mizen shrouds, as a signal that the Court Martial was to be held on an Admiral.

At ten o'clock the Britannia fired a gun, and the Union Jack was hoisted at the fore-top mast head, as a signal for all the Admirals and Captains in harbour to come on board.

At half past ten o'clock, the signal was obeyed. The Admirals and Captains going in their respective barges on board the Britannia.

Admiral Keppel was attended thither and back by many Admirals, and by a most respectable body of officers of the Navy, drawn together by that habitual love and veneration, which they are so well known to have for him, and by a number of persons of the first rank and most respectable characters in the kingdom, whom his long and eminent services to this country, have attached to him in the strongest manner.

The names of the thirteen senior Admirals and Captains, exclusive of those summoned as witnesses, were then called over; and with them the court was constituted. Captain Wallingham, who is a witness,  
finding

finding his name not called, desired to be informed of the reason. But an opinion of the Attorney and Solicitor General, and Mr. Cust, the counsel for the Admiralty, on a case laid before them by order of the Admiralty, being read, and it appearing, that they thought witnesses disqualified from being judges, Captain Walsingham acquiesced.

After the orders of the Board of Admiralty, and the Acts of Parliament, were read, and the usual oath administered to the Members, the Court was adjourned to the Governor's house, in the garrison.

### The C O U R T.

**PRESIDENT**, Sir Thomas Pye, Admiral of the White.

**ADMIRALS**, Matthew Buckle, Vice Admiral of the Red.

John Montagu, Vice Admiral of the Red.

M. Arbuthnot, Rear Admiral of the White.

Robert Roddam, Rear Admiral of the White.

**CAPTAINS**, M. Milbanke — May 21, 1748

F. S. Drake — — Nov. 15, 1756

Taylor Penny — — Nov. 1, 1757

John Mourtray — — Dec. 28, 1758

William Bennet — — Mar. 5, 1760

A. Duncan — — Feb. 21, 1761

P. Boteler — — Mar. 26, 1762

James Cranston — — April 7, 1762

Admiral Keppel was received at the door of the court house with three cheers, from the crowd assembled to see him pass. It was observed, that whilst the charges were reading, he kept his eyes steadily fixed on Sir Hugh Palliser. His manner throughout was chearful, firm and easy, and strongly expressive of the most conscious innocence.

After the charge was read, and the other formalities gone through, Mr. Keppel requested that as the Masters

ters of the different ships in the fleet, were summoned to attend with their log books, the log books might be deposited in Court, and laid upon the table, for the inspection of the Members, as they might see occasion.

Sir Hugh Palliser objected to this in the strongest manner. He said, that the proper time for producing the log books, would be when each of the Master's came to be examined, and that they could then only be produced as evidences.

Admiral Keppel replied, that he was still of opinion, that in order to avoid all suspicion of unfair practices, the books ought to be deposited in Court; that his request was in the judgment of the Court, but that he did not think it at all the less proper from its being so violently opposed by his accuser.

Sir Hugh then objected to it on account of its being unusual and unprecedented.

The Admiral replied, that he still adhered to his requisition, and desired the Court would take it into consideration.

When he had finished, Sir Thomas Pye got up, and observed that as the accused, and the accuser, were of contrary opinions, it lay with the Court to decide, which of them should prevail; and proposed, that it should be taken into consideration, and that the Admirals should be made acquainted with the determination to-morrow morning.

Admiral Montagu agreed to the proposal of the President, and at the same time gave it as his opinion, that the Admiral's request was extremely proper and necessary, and mentioned an instance which he himself had been a witness to, where shameful falsifications had been made in log books during the trial.

*January*

*January 8.*

Sir Hugh Palliser desired that an oath might be administered to each master, that the log book he delivered was the true and original ship's log book, without any alterations or additions since made therein.

Court agreed.

Masters names read and sworn accordingly.

Mr. Mosely, master of the *Bienfasant*, had no log book, and had left his journal at Plymouth.

The master of the *Vengeance* at the time being moved, the present master swore, that the log book he delivered in was the same he received from the former master without any alteration.

The *America's* master delivered a copy in his own hand writing, sworn to accordingly.

The *Robuste's* master (Mr. Arnold) refused the oath, some alterations and additions having been made. The captains thinking them not sufficiently particular, they were facts he could not swear to.

The log book laid upon the table.

Mr. Keppel desiring to ask the master a question or two, and it being observed that he was not upon oath, the usual one was administered to him.

The President thought that Sir Hugh Palliser ought to be allowed to ask his questions over again, which was, "If the masters objection to the oath was on account of the alterations or additions!"

He replied both.

Question by Mr. Keppel, Were they made since it was known I was to be tried by a court martial?

Answer. I believe some of them were ten or fourteen days ago.

Q. By Mr. Keppel, By whom and by whose order?

A. By the Captain's order, copied by one of the mates.

F

Asked,



Asked, whether they were given in writing?

A. Some were verbal, some in writing.

Q. Did you, upon the Captain's requisition, refuse to insert them yourself?

A. No, I could not.

Q. Was there any officer present at the time?

A. I believe the first lieutenant.

Q. Were they made by the usual person who keeps the log book?

A. Yes.

Q. Where were the alterations made?

A. In the great cabin of the Robust.

Q. Did the captain see the log book?

A. The captain sees the log book every day.

Q. Whether, after the action, the captain approved of what was put into the log book relative to that day's work?

A. It was not inserted in the log book until it had received the captain's approbation.

Q. Were the alterations for the 27th and 28th inserted at that time by the captain's approbation?

A. The captain frequently found it necessary to add to, or interline.

The remainder of the masters sworn.

The master of the Elizabeth had no log book or copy.

The Thunderer's master swore to a copy.

Sir Hugh Palliser desired to have access to the log books out of court hours.

Mr. Keppel objected.

Determination of the court thereon deferred until to-morrow. The masters ordered to withdraw.

Capt. MARSHALL of the Arethusa frigate, sworn.

Allowed to look at his minutes.

Examined by Sir Hugh Palliser.

Q. When

Q. When was the French fleet *first* discovered?

A. On the 24th of July, about half past two o'clock. We did not see them so soon as other ships.

Q. Were the French fleet, during that afternoon, to the eastward of the British fleet, or how otherwise situated?

A. I am not prepared to answer any questions previous to the 27th of July, but I will speak to the best of my recollection.

Q. How did the enemy appear to be employed? Was it in forming their fleet into a line of battle? Or in what other way?

A. I did not observe, being so much otherwise employed.

Mr. Keppel. I think nothing can come as a charge against me but what relates to the 27th or 28th of July. But I have no objection to such questions being asked. If the accuser does not go into them, I believe I shall.

Q. Between seven and eight o'clock in the evening of the 23d, how was the French fleet standing? Was it to or from the British fleet?

A. To the best of my recollection the British fleet had their larboard tacks on board, the French their starboard.

Q. At eight o'clock did not the King's fleet bring to on the larboard tack per signal?

A. Yes. [Admitted also by Mr. Keppel.]

Q. Was the wind about west by north, or west north west at that time? Or how was it?

A. At west by the log.

Q. What time or hour do you mean?

A. From half past three to nine o'clock.

Mr. Keppel. I wish Capt. Marshall were permitted to withdraw to recollect himself, that he may be able to answer these questions, as he came only prepared for

those that relate to what passed on the 27th and 28th of July.

Permitted to withdraw.

After a little time called in again.

Q. At what distance, and in what situation was your ship, from the Victory, at six o'clock in the morning of the 27th of July?

A. My ship was nearly in her station: rather abaft the admiral's beam, about three miles distant.

Q. Were not the ship's of the British fleet at that time much extended, scattered, and dispersed?

A. Some ships of the blue division to leeward, and the red division rather to windward, upon the weather quarter.

Q. Were there not some ships considerably to leeward, and others considerably to windward?

A. In the morning they were.

Q. Was there a signal made by the Victory on the morning of the 27th of July, for several ships (particularly of the Vice-Admiral of the Blue's division) to chase to windward? If you recollect this, say at what time? And for what ships the signal was made?

A. Such a signal was made, but I did not repeat it.

Q. At what time was it made?

A. I do not recollect.

Q. For what ships was it made?

A. I know not. [referred to his log] It is not mentioned here, but I imagine the signal was for some ships of the blue division.

Q. In consequence of that signal, did you observe several ships chasing?

A. Some ships did chase. The number I know not.

Q. Did not that signal occasion those ships to be more separated from their flag, and more scattered than before.

A. I cannot determine. I was to windward.

Q. As

Q. As you was to windward, and as those ships were chasing to windward, and you saw them chase, did it not cause them to be separated and more scattered than before ?

A. Certainly the ships that sailed the best, increased their distances the most. I don't pretend to speak as to the fleet. I attended only to the flag.

Mr. Keppel. I suppose, he was employed in making minutes of signals, and he could not of consequence attend to the fleet.

Q. Was not the British fleet then standing on the larboard tack, till there was a signal made for them to tack all together ?

A. Yes.

Q. At what hour was such signal made ?

A. At half past ten o'clock.

Q. Soon after the British fleet tacked, was not the French fleet discovered to windward, approaching to the fleet on the contrary tack, in a regular line of battle, a-head ?

A. I did not observe either in a line of battle, or on a contrary tack until just before the firing began a-head.

Q. When did you discover the French fleet in a line of battle ?

A. When they had their larboard tacks on board.

Admiral Montagu. Did you see the French fleet in a line of battle before the engagement began ?

A. I imagine they were in line of battle before they tacked. I believe it was about nine o'clock in the morning.

Q. Did Admiral Keppel make the signal for the fleet to form into a line of battle, or into a line on any point of the compass the day before the engagement began ?

A. No—I think not.

Q. Was



Q. Was there sufficient time for a line of battle to have been formed, from day light before the engagement began ?

A. There was five hours.

Q. Did the King's fleet advance towards the fleet of France, without being in such line or order ?

A. Yes.

Admiral Buckle. Was there a general signal for the whole fleet to chase at that time ?

A. Not that day. But I consider that we were in chase from the time we saw the French fleet, except when there was a signal for the line of battle.

Q. As the British fleet were not in a line of battle, or in any line upon any point of the compass, was it possible for us to engage ship to ship, from the manner in which we were engaged.

A. It was impossible some of our ships being so far to leeward.

Q. Did Admiral Keppel make the signal for battle, whilst the fleet was without any line of battle, or any other line ?

A. Yes.

From the President Sir Thomas Pye. Did Admiral Keppel make the signal for battle before the firing began ?

A. The firing began first.

From the Court. Did the French or English fire first.

A. I do not know.

Q. Did you observe the Formidable after the engagement ? and what situation was she in ?

A. Disabled, as some other ships were.

Q. Did you observe her wear and lay her head to the enemy ?

A. I did not observe her at the time of wearing, but her head was laid to the enemy.

Sir

Sir Hugh, were not those ships then a-head of the Admiral, when they were ordered to chace, and on his lee bow ?

A. Some of them I believe were.

Q. Were not some of the frigates and fireships exposed to the enemy's fire, before they could get out of the way ?

A. I know not.

Q. Did any of the enemy's shot go over your ship, before you got out of the way ?

A. No, not till I was in my station, a-breast of the Victory, to leeward ; and after I had brought to, and then I think we bore up twice a little out of the way of the shot, having no business there.

Q. Were any of the frigates and fireships then to windward of the Victory, and a-head of you ?

A. There might be. I cannot be positive.

Q. What situation did you preserve with respect to the Victory, when she was going down along the rear of the enemy's line ?

A. I endeavoured to keep on the Victory's beam out of gun shot.

Q. Was you in that situation when the Victory passed the last of the French line ?

A. I cannot be positive as to the exact situation. The Victory being in a smoke, I could only see her at intervals. I endeavoured to keep in my station.

Q. When the Victory had passed the rear of the enemy's line, and had ceased firing, and the smoke was cleared up, did you then see her, and in what situation was you then from her ?

A. I saw the Victory certainly, but it is so long ago, I cannot recollect the exact situation of her.

Q. How long and how far did the Victory continue to stand after passing the last of the French fleet before she wore ?

A. To

A. To the best of my recollection, a very little while.

Q. What do you mean by a very little while?

A. I cannot confine myself to any time.

Q. Ten minutes?

A. I cannot confine myself.

Q. As to the distance, what will you please to say?

A. I cannot ascertain the distance.

Q. At what time did the Victory wear?

A. We repeated the signal soon after one, as it appears by my minutes taken down by the purser. I never had the glass out of my hand.

Admiral Montagu. Do you know from your own knowledge, what time the Victory wore?

A. By my glass I saw the signal, and imagine it was soon after one.

Q. Was the signal for battle on board the Victory hauled down before or after she wore?

A. To the best of my recollection after she wore.

Q. How long after?

A. Not a great while.

Q. Have the minutes taken on board the *Arethusa* of the signals made, been examined and compared with those minutes taken on board the Victory?

A. The minutes I have in my hand were taken by the purser, and will be sworn to.

Asked again.

A. They have not been compared with any other minutes, except seeing as to time, and there has been no alteration.

Q. Whether those minutes you have in your hand, mark the time the signal for battle was hauled down?

A. It was at twenty-six minutes past one P. M.

Q. Did the Victory at any time set her top-gallant sails that day?

A. I

A. I do not recollect that she did.

Q. Did you observe a signal from the Admiral for any of the Vice of the Blue's division, to come into the Victory's wake?

A. There was such a signal.

Q. At what hour was it first made?

A. At twenty-four minutes past three o'clock.

Q. How long did it appear to you to be flying?

A. About six minutes.

Q. Was it hauled down?

A. Yes.

Q. Was it hoisted again? And at what hour?

A. At ten minutes past six o'clock.

Q. The morning after the engagement, that is, on the 28th of July, were not three of the enemy's ships in fight?

A. I observed three sail.

Q. Were they line of battle ships, or frigates?

A. I cannot say.

Q. Was there any signal made by the Admiral to chase them?

A. I think not.

*January 9.*

Sir Hugh Palliser put a very long question to Capt. Marshall, in which he made use of the terms more scattered, and in more disorder. Admiral Montagu observed, that it was drawing a very unfair conclusion from the evidence that had been given by Capt. Marshall, for he had only said that Admiral Keppel made the signal for battle when the English fleet was not formed in a regular line of battle: but a fleet might be in strict discipline, and pursuing the best and only means of engaging an enemy, and yet not attack in line of battle; and a fleet being in strict discipline, and obeying signals, was not a fleet



in disorder, which, according to the general acceptation of the word, as arranged in Sir Hugh Palliser's question, implied confusion and want of discipline. Capt. Marshall observed, that the word disorder was not in the minutes of his evidence, and that he never would admit that the fleet was in disorder, because it was not in a line of battle. He thought that taking the only means that offered to bring an enemy to action, is taking the best means.

Sir Hugh then asked, whether the signal for the line was hoisted on board the *Victory* when she wore?

Capt. Marshall replied, that when the *Victory* wore, and stood again towards the French fleet to renew the action, the signal for the line a-head, one cable's length asunder, was hoisted, and flew from forty minutes past one till twenty-three minutes past three.

Sir Hugh Palliser asked Capt. Marshall, what other signals were made from that hour till dark?

Answer. At thirty minutes past three, signal again made for to form the line a-head a cable's length asunder; at thirty-seven minutes past four, signal for observing ships out of their stations; this general signal was flying till dark, but at times pendants were hoisted with it, which distinguished particular ships; twenty-two minutes past five, signal for the *Proserpine*, Capt. Sutton; she was sent with a message to Sir Robert Harland; thirty-two minutes past five, signal for the *Fox*, Capt. Windsor, sent with a message to Sir Hugh Palliser; twenty minutes past six, signal for ships to get into the Admiral's wake. Capt. Marshall gave a detail of several other signals of the same nature, occasioned by the circumstance of Admiral Keppel's being unsupported by the Vice Admiral, Sir Hugh Palliser.

When

When the *Formidable* stood towards the *Victory*, and passed to leeward of her, was the signal for the line of battle a-head flying on board the *Victory*?

Captain Marshall replied, that it was.

What was the station of the Vice Admiral upon the larboard-tack, with the signal flying from the line of battle a-head?

Captain Marshall replied—A-head of the *Victory*, leaving room for the *Foudroyant*, *Prince George*, *Bienfaisant*, *Vengeance*, *Worcester*, *Elizabeth*, *Defiance*, and *Robuste*, to form between the Vice Admiral and the *Victory*.

Q. Was there any one of those ships between the *Victory* and the enemy, in obedience to the signal flying for the line of battle a-head, at the time the Vice Admiral passed the *Victory* to leeward?

A. No.

Sir Hugh Palliser then asked questions, in which he tried to shew that Sir Robert Harland was out of his station when he went to Admiral Keppel's assistance, instead of keeping a-stern of the Vice Admiral: and at last Sir Hugh, having tired himself, and the court, and the audience, with round-about examinations and cross-examinations, and long-winded questions, he thought proper to dismiss Captain Marshall. But Admiral Montagu begged leave to put one question, which might tend to shew how far, in the judgment and opinion of the evidence, he, (Captain Marshall) had in the course of so long an examination proved the charge against Admiral Keppel. The question was then put as follows:

Captain Marshall, from the day you first saw the French fleet, to the time you lost sight of them, did you, from your own observation and judgment, know of any act of the Commander in Chief, Admiral

*Sir W. Burnaby.]* ( 48 )

ral Keppel, behaving or conducting himself unbecoming a skilful flag officer ?

A. *No, as God is my judge.* [The effusions of a good conscience and an honest heart never were more conspicuous than in the countenance of Captain Marshall, and the manner of his expressing those few words. The whole audience were affected by it, and the blood seemed to flow quick with pleasure to the heart of every man present, but poor Sir Hugh. A general clapping of hands ensued, till the cry of order from the court brought people to orderly modes of expressing their satisfaction.]

*January 11.*

Sir WILLIAM BURNABY's Examination.

The accuser entered into the examination of the 25th and 26th of July, days prior to the charge, but which the Admiral made no objection to. His intention was to prove, that the French fleet did not avoid battle from any other reason than the weather preventing them.

Sir Hugh asked if the French could have fought their lower-deck guns the days of the 25th and 26th, and was answered that they might have fought some of them.

Q. Was there any sea ? Any great sea ?

A. Such a sea as there generally is with such a wind.

Q. Would it not have been disadvantageous to the French to have come to battle either of those days ?

A. Yes, it would have been disadvantageous.

Q. Did Admiral Keppel make the signal for battle whilst the British fleet were dispersed ?

A. The signal for battle was made about half past eleven ; our fleet then a little scattered.

Court

Court asked the following Question.

Q. If the Admiral had not advanced towards the enemy, although the line of battle was not regularly formed, could he have brought the French to action, had he waited for forming the line?

A. I should think not, if the French had been disposed to have got away?

Q. How long did the Victory continue to stand, after passing the French fleet, before she wore and stood towards the enemy again?

A. About twenty-five minutes.

Q. Were there any ships a-head of the Victory when she stood towards the enemy?

A. I did not see any.

Q. Would it have been prudent in the commander in chief to have renewed the battle before the ships that were shattered in their rigging were refitted, and in a condition to engage?

A. I do not think myself a competent judge.

Question by the Accuser. If the Admiral had made the signal appointed by the thirty-first article of the fighting instructions for ships on the starboard tack, in the line of battle, to have taken the lead, could that division have complied with that signal?

A. To the best of my judgment the Queen, Sir Robert Harland's ship, could have obeyed the signal; but I do not know how many could follow her.

Q. If the enemy had been so re-attacked by the Vice Admiral of the Red and his division, and the Admiral had advanced with the rest of the fleet, would it not have prevented the enemy recovering their confusion, and from forming a new line of battle?

A. I judge it might have prevented them from forming a line so soon as they did, provided our ships were then in a condition to renew the battle; but farther



farther it is impossible for me to be a competent judge.

Q. Did the Admiral with the fleet continue on the starboard tack till it was night?

A. Yes, I think he did.

Q. Did you on the morning of the twenty-eighth see any French ships to leeward?

A. Yes, several, three or four, I did not mark it down.

Q. Were they near the English fleet?

A. I do not recollect the distance.

Q. Were they line of battle ships, or frigates?

A. I do not recollect which.

Q. Was there any signals made for seeing strange ships?

A. I do not recollect to have seen any.

Question from the Court. During the day of the action, as far as consists with your own knowledge, did Admiral Keppel negligently perform the duty imposed on him?

A. I am not a competent judge; I say from my heart I think him a brave, gallant officer; the question is far above me to answer; it does not become me to presume to give an opinion which can be of little weight.

Court. You can say yes or no.

A. I exceedingly respect the character of the worthy Admiral; I think him a most gallant man; I speak from my heart; nobody has a higher opinion of him than I have.

Q. Do you remember the Admiral being on the larboard-tack, with his head towards the enemy?

A. Yes.

Q. Inform the Court where the Vice Admiral of the Blue ought to have been, when the signal was flying for the line a-head.

A. He

A. He should have been a-head of the Victory with his division, between her and the enemy.

Q. Was the Vice Admiral and his division in that station ?

A. No, I do not recollect they were.

Q. Where was the Vice Admiral of the Blue ?

A. I do not recollect.

Q. Where was you when the Admiral laid his head towards the enemy ?

[Looks at his Minutes.]

A. I do not know where I was ; I do not recollect the immediate time the Admiral went.

Q. Were the English fleet dispersed when the Admiral stood towards the enemy ?

A. I think they were.

Q. Did Sir William Burnaby see any ship a-head or near a-stern, of the Victory, when she stood towards the enemy ?

A. I cannot say I observed any.

Q. How far was Sir Robert Harland from the French fleet ?

A. I cannot tell.

Q. You said that he might have prevented the French fleet from forming their line : if you do not know the distance, from what do you judge it was possible ?

A. Though I do not know the distance, I think he might have prevented the French forming so soon.

Q. How many ships were with Sir Robert Harland ?

A. I cannot recollect.

Q. Did you see, or can you recollect any ships near the Victory, that could have supported the Admiral while he stood towards the French fleet ?

A. I do not recollect any.

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*Sir W. Burnaby.] ( 52 )*

*January 12.*

*Cross examination of Sir William Burnaby by  
Admiral Keppel.*

Admiral Keppel. Did you see the Vice Admiral of the Blue with several ships of his division?

Sir William Burnaby. I was prevented by the intervention of Sir Robert Harland's ship.

Q. They were not on the leeward of Sir Robert Harland?

A. There were different ships of the Red Admiral's division, which prevented my view.

Q. Did the Vice Admiral of the Red, in making fail according to my orders, pass to the leeward of the Vice Admiral of the Blue?

A. I believe he did.

Q. Did the Vice Admiral of the Red, in getting to his station a-head, pass to the windward of the Admiral?

A. I think he did.

Q. At what hour did you make observations that the Vengeance was in danger, as you have described her?

A. About five in the afternoon.

Q. Had Sir Robert Harland then made fail, or was he making fail agreeable to the Admiral's orders?

A. I think he was making fail.

Q. Was your ship then as near to the Vengeance as to the Victory?

A. At the time I observed her in danger, I think I was much nearer the Vengeance.

Q. After Sir Robert Harland had at this time made fail, how many ships in line of battle were in the Admiral's wake astern of him?

A. I neither recollect their number or their names.

Q. Do

Q. Do you allow there were any ?

A. There were.

Q. Were there two ?

A. Undoubtedly.

Q. Was the Vice-Admiral of the Blue one ?

A. I judged them to belong to Sir Robert Harland's or the Admiral's division.

Q. Where was the Vice-Admiral of the Blue when Sir Robert Harland interrupted your sight of him no longer ?

A. I think he was a-stern, and pretty well to windward.

[In answering this question he recollected himself, and gave it in other words, though with much the same meaning as at first. To this Sir Hugh Palliser objected, and insisted that the first words should be taken down. The Court however unanimously agreed, that if it was admitted in one case, it should be in others, and it had been hitherto admitted to all to recollect themselves.]

Q. Was the Vice-Admiral of the Red when a-stern a little to windward, closed in the line with the Admiral's rear ?

A. I said before, that at five she was a little to windward in the Victory's wake, closed very near some of them.

Q. Was it at this time when you was to leeward, and the Vice-Admiral of the Red closed in with the ships a-stern of the Victory, that he intercepted your view of the Vice-Admiral of the Blue ?

A. I before said that it was in passing to leeward from the Victory to Sir Robert Harland, that my view was interrupted, by what ships I did not point out, all contributed.

Q. When you hailed the Queen, did you see the Vice-Admiral of the Blue ?

H

A. I



A. I cannot say I did.

Q. At this time was there a signal for a line, or a blue flag at the mizen-peak, or either flying?

A. I recollect neither, nor did before, I signified that I had not seen any alteration of the signal for forming the line on the starboard tack.

Q. If at the time when the Vice-Admiral of the Red moved, the Vice-Admiral of the Blue had taken his place, would it not have given certain security to the Vengeance?

A. I should judge so if his ships were fit for action.

Q. Did you then know whether they were fit?

A. I did not imagine so.

Q. From three in the afternoon of the 27th till six, did you observe any British ships much to leeward before the beam, and on the lee bow of the Victory?

A. I do not recollect any.

Q. Did the Admiral on the 24th, when the French fleet were in view, call you within hail, and what orders did he give you?

A. He did call me, and bid me make sail, and keep between the British and French fleets.

Q. Did you see any motion that night that gave you reason to make a signal?

A. I did not.

Q. Did the Admiral pursue the French that afternoon by signal of the compass, and endeavour to close with them?

A. I recollect your carrying sail on the larboard tack, and standing towards the French with our van in tolerable order in line of battle.

Q. Was it by standing further from the Admiral than the Queen, that you gained an opportunity of seeing the Vengeance?

A. It

A. It was.

Q. Is there not an appointed signal when an Admiral would have able ships guard those which are disabled?

A. There is, but I neither saw or knew of one being then made.

Q. You have told the Court that the Vice-Admiral of the Blue was well a-stern of the Admiral's wake—did you then notice the situation of the Formidable as to sails and rigging?

A. I do not recollect her immediate situation; I think she seemed disabled.

Q. Did she appear equally as able to carry sail as the Victory?

A. I think not.

Q. Did not the Victory carry her topsails intire, and her forefails at that time?

A. I have said before, I believe, during the greater part of the afternoon, she carried her topsails and forefails, but whether whole I cannot say.

Q. Did you observe a signal from the Vice-Admiral of the Blue, that he could not accompany the Admiral?

A. No.

Q. Is there such a signal?

A. I think so.

Q. Was the Victory a better failer than the Formidable?

A. From the observation I made of their sailing, I think she was.

Q. As you say the Formidable was disabled, and the Victory had the advantage of sail, do you suppose the distance between them was occasioned by the Victory's sailing, or a fault in the management of the Formidable?

H 2

A. I.

A. I conceive it arose from the disability of the Formidable, and the natural superiority of the Victory.

Q. When you passed near the Formidable could not you soon have taken any message from Sir Hugh Palliser to me ?

A. If a signal had been made to me for that purpose, I could soon have done it.

Sir Hugh Palliser. Was not the condition of the Formidable apparent at that time,

A. Before then she appeared to be disabled.

Admiral Keppel. Was the topmast, topgallant mast, topsail yard, or lower yard, of the Formidable, carried away ?

Sir Hugh Palliser admitted that they were not.

Capt. DIGBY of the Ramilies, was then called.

Sir Hugh Palliser begun to interrogate him with regard to the business of the 23d ; when Admiral Keppel begged the Court to take notice, that, for the purpose of shortening, if possible, the length to which he saw the trial would necessarily extend if they still went over the same ground, and questions were repeatedly asked which he had admitted, he again told them, that he admitted that the French fleet put themselves into order of battle when we discovered them.

Sir Hugh Palliser. When the French fleet was to windward of the English, with the wind at west, was not Ushant then under their lee ?

Capt. Digby. It was.

Q. What situation was the French fleet in the morning with respect to the British ?

A. To the northward.

Q. Had the French Admiral intended to have avoided coming to an action, would he not have avoided

avoided on the starboard tack in the night time toward Brest.

A. That is matter of opinion.

Q. Had the French Admiral continued to stand on that tack all night, with the wind blowing strong, as you have described, would they not the next morning have been near to the port of Brest, and at a great distance from the British fleet?

A. They would have been nearer to the port of Brest, and farther from the English fleet than they were.

Q. But on the contrary, did not the French gain the wind of the British fleet, and thereby place it between them and Brest?

A. They were to windward the next morning, and of course we were nearer between them and Brest.

Q. Did you consider these motions of the French Admiral as tending to avoid, or to come to an action?

A. I did imagine, at that time, the French fleet intended to come to action.

Q. You say it blew hard in the night; what weather had you next day?

A. It was more moderate.

Q. From your recollection of its blowing fresh and squally part of those days, was it attended with sea and swell, as is usual to such weather?

A. There was a swell, but not very particular.

Q. Could ships have fought their lower deck guns?

A. I could not have fought all mine, the whole time.

Q. Had the French come down and attacked the British fleet at the time when the British fleet could not fight their lower deck guns, would it not have been very disadvantageous for us?

[Here it was objected, that Sir Hugh Palliser had drawn a conclusion very different from the evidence, and



and asked his questions in terms which could not be admitted. It was said such an unwarrantable perversion could not be tolerated. Instead of stating, that the *Ramilies* could not fight part of her lower deck guns, he had stated that all the fleet could not fight all their lower deck guns. In consequence of this reproof, he altered his question, and it stood, that whenever such ships as the *Ramilies* could not fight her lee lower deck guns, would it not have been, &c.]

A. That seems matter of opinion, and depends on their ships:

Q. When the weather moderated, did it appear to you that the French Admiral crowded sail to get away, or that he made and shortened sail occasionally, to perfect his line of battle?

A. I saw many of the ships shortening sail and crowding sail occasionally, but after the first day, I always thought they wished to get away.

Q. Did you see the French fleet bring to, in order for the British fleet to come up to them?

A. I don't recollect ever seeing the whole of the French fleet brought to at any part of that time.

Admiral Montagu. Did you see the British Admiral endeavour to get up to the French fleet, while they were forming their line?

Admitted by the prosecutor.

Q. In the morning of the 27th, was the British fleet much extended, or scattered, or dispersed?

A. Much about the same as it was the day before in the morning before the signals were made.

Q. How were they the day before?

A. They were not in the same sort of order as when there had not been a line of battle.

Q. Do you remember a signal being made that morning for several ships of the Vice-Admiral of the Blue's squadron to chase to windward?

A. I do

A. I do.

Q. How many were there?

A. I think there were four.

Q. At what time did the British fleet tack altogether, to stand towards the French fleet?

A. I think between nine and ten.

Q. Did the Admiral make any signal for the British fleet to form into a line of battle that day before the engagement begun?

Admiral Keppel begged the Court to recollect that he had admitted that fact over and again. He did not mean to form a line of battle till he had closed with, engaged, and passed the rear of the French fleet.

Sir Hugh Palliser. Did the Admiral make the signal for battle whilst the fleet was scattered and dispersed?

[Here again the Vice-Admiral was called upon to attend to the words of the witness. The witness averred he had never said the fleet was scattered and dispersed. The four ships indeed that were ordered to chase were separated. This Admiral Keppel said he meant them to be, and he hoped there would be found no more of these mistatings.]

He then stated the question, when the fleet was thus separated and dispersed?

A. I do not know what dispersed means, but the signal was made when part of the fleet was so separated.

He denied that any shot had been fired near him, by our own ships, through their irregularity. And he said that he was so far distant, and so very much engaged, that he could not attend to the business of the day.

Admiral Montagu. Can you acquaint the Court of any instance within your own knowledge, during the time the British and French fleets were in action, that  
Admi-

Admiral Keppel neglected to do his utmost to burn, sink, and destroy the enemy, having it in his power so to do, or negligently performed the duty imposed on him?

A. I have always had the greatest esteem, and the greatest opinion of Admiral Keppel, as an officer; I have so still; but I have been giving evidence upon facts, and the answering that question would be judging upon them, which I have no right to do.

Admiral Montagu. In both articles of the charge, Admiral Keppel is charged with running away from the French fleet. Did you that day see him run away from them, instead of advancing to renew the engagement, "as he might and ought to have done," which are the words expressed in the charge?

The charge was then read, and an objection started by Sir Hugh Palliser to the question, as contrary to law. Upon which several members of the Court Martial said, they did not care sixpence in this case for the law; we are come here to do justice, and hope, in God's name, it will be done.

Admiral Montagu. If Admiral Keppel ran away, Captain Digby did so too; and I suppose every part of the fleet followed their leader. Did you that day run away from the French fleet?

Captain Digby replied, No.

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*January 13.*

*The Continuation of Captain DIGBY's Evidence.*

Admiral Montagu. In the second article of the charge against Admiral Keppel it is stated, that he did not collect his ships together in the morning of the 27th, when the French attacked him; was not the van and centre of the English fleet engaged as they passed?

A. Great

A. Great part of them were.

Q. Was the ship you commanded engaged?

A. Yes.

Q. What was the condition of your ship?

A. Our main topsail was cut to pieces, our standing and running rigging very much cut, so that we were not able to wear for some time. The foremast wounded in several places, and in one place it was cut one half through. Several of the other masts were wounded; the main yard and main mast in particular.

Q. Admiral Montagu. In the situation you have described your ship, was it such as you could have renewed the attack, if the Admiral had tacked immediately after the enemy?

A. I do not think my ship was in a condition to seek an attack for a good while.

Q. Admiral Montagu. How long was it after before you could have renewed the attack if the Admiral had thought proper so to do?

A. It was near seven o'clock before I was able to tack. The lee leach mainsail being so cut, that I could not set it upon the other tack, which was necessary, on account of my being so far to leeward.

Q. Admiral Montagu. Was not you to have lead the van on the tack, when the Admiral had led his head to the enemy?

A. No, Sir.

Q. Admiral Montagu. Did you tack?

A. Yes.

Admiral Keppel observed, that Captain Digby, the day before, had said, that though he was not in a condition to seek to renew the attack, yet if an attack had again been made, he considered himself in a situation to support it, there being a great deal of difference between attacking and being attacked.



Captain Digby said he did not think his ship was in a condition to seek an attack for a good while afterwards, and particularly described how his ship was wounded.

Admiral Keppel. There is, in my judgment, a great difference between being in a condition to support an attack, if the enemy had made it, and being in a condition to make it.

Captain Digby. This is very much what I meant to say, that is my meaning.

Admiral Keppel. I don't mean to cavil about words, be so good as to have your own words put down.

Admiral Montagu. I beg the Captain will have his words put down in the minutes that the Court-Martial are to refer to, when we come to debate upon the evidence that his words may appear there.

Sir Hugh Palliser now wished to ask some questions of the evidence; but as he on the day before reclosed his examination, it was decided by the Court that he could not ask any further questions till the Admiral had concluded his cross-examination.

Admiral Keppel. What force of large ships did you discover on the 23d in the afternoon the French fleet to be composed of, and how far were they from you when the day permitted you to count them?

A. I could not count them.

Admiral Keppel. How far was the Vice Admiral of the Red and his division from you at the latest period of the day?

A. As the fleet had been endeavouring to get into a line of battle, I was nearly so, though not got into my station, in point of distance from the Vice Admiral of the Blue, yet nearly so; that will determine my distance from the Vice Admiral of the Red.

Admiral

Admiral Keppel. This is not sufficient. Can you say how far his division was from you?

A. He was at the one end of the line and I at the other, and the day was so hazy, and the weather so thick, that I am not sure that I saw him.

Admiral Keppel. I must ask Captain Digby a question, to which I hope for a direct answer; he is an officer whose rank in the navy entitles him to high command, and he has had such command. Could he, with a squadron of ships under his command, while the French were in the situation described on the 24th, 25th, or 26th, with such weather, wind, and sea, as he has described, and seeing an enemy of equal force to the leeward in the position he has stated; could he have hesitated one moment, on account of weather, wind, and sea, to have led his squadron down to battle?

A. I believe I should have attacked them.

Admiral Keppel. I asked whether you would have hesitated one moment?

A. I think I should not have hesitated.

Admiral Keppel. Can he inform the Court of the relative situation of the English and French fleets, at day light of the 27th of July?

A. As well as I recollect, we were both on the larboard tack, the French fleet about six, seven, or eight miles to windward of us.

Admiral Keppel. What was the situation of the Vice-Admiral, of the Blue, and his division, with respect to the Victory at that time?

A. They appeared to me to be on the Victory's lee-bow, but I am not sure.

Q. What distance do you think they were from the Victory?

A. At their period I cannot recollect the distance.

Q. Can you recollect what sail they were under?

A. I cannot indeed.

Q. At this time how was you nearly situated in the Ramillies, relative to the Vice Admiral of the Blue and the Victory?

A. I have said that I cannot recollect at that period of time, but I remembered to have ordered my officer to keep on the Vice-Admiral of the Blue's weather beam, a mile at least, and when I did take notice he had kept still farther.

Q. When you did take notice, what hour of the day was it, and where was you then with respect to the Victory?

A. On the signal being made for the ships to chace in the morning to windward, I set my stacing, and the period that strikes me strongest, was just after we tacked, between eight and nine. I believe I was then on the Victory's weather quarter.

Q. Was there any greater indication, when the ships were ordered to chase to windward of the French intending to fight, than on the preceding day?

A. I think not.

Q. Had the Admiral formed a line in the morning, must he not have borne down to join the ships to leeward, or have shortened sail, and called back the Red division, and thereby have increased his distance from the French fleet?

A. He certainly must have borne down, and many of the ships to windward also, and would have in course increased his distance.

Q. Can you inform the Court, the exact time when the French tacked from the larboard to get upon the starboard tack?

A. I cannot from my memory say the exact time, but I believe it was about three quarters of an hour before we tacked.

Q. After

Q. After the English fleet were about from their starboard tack, was there any sort of change in the wind?

A. It favoured us.

Q. When the wind favoured us a little, did you lay up to a part of the French fleet?

A. I did.

Q. On what tack were the French fleet when the engagement begun?

A. On the larboard tack.

Q. Did you know how they got upon that tack, and when?

A. It was very thick, and I did not know.

Q. Had you lost sight of them for any time?

A. I think we had.

Q. When you discovered them again, were they then got upon the larboard tack.

A. They were.

Q. Do you recollect how long it was upon your discovering them again before the firing began?

A. I was at breakfast, and did not see them on that tack, till my officer told me there was firing a-head.

Q. What hour was that?

A. About eleven o'clock, I fancy.

Q. Were the greatest part of the ships of the British fleet, when they came to battle, in a situation speedily to support each other?

A. I could be no judge of the Vice-Admiral of the Red's division. I know that in that part where I was, I was supported by the Admiral and his seconds.

Q. Can fleets at any time, being on different tacks, fight ship to ship, with or without being in a regular line?

A. I think not.

Q. You have described yourself to be near the Admiral, and supported by him, when you, in the Ramilies



Ramilies, and the English Admiral were engaged with the French Admiral—was that part of the French fleet in a regular line, as you and the Victory passed them, carrying along, or in a confused position.

A. They were not in a regular line.

Q. Were any of them right to leeward of the others?

A. There were some of them a good deal to leeward, but whether directly to leeward I cannot say.

Q. Were there to your observation more British or more French ships engaged. I mean, engaging like men, close, and not at a distance?

A. My attention was so much taken up with my own ship, I could only observe those who were just about me.

Q. At what hour in the afternoon of the 27th of July, did you first see the Victory on the starboard tack, standing to the southward, after she had passed the rear of the French, as you have said that you did not see her wear?

A. I had not an idea of time after the engagement began.

Q. Did you see her wear from the larboard tack to the starboard?

A. No, I did not.

Admiral Keppel. Time is the most material thing to me to ascertain the course of my duty towards my King and Country, on that day; and therefore bringing matters before the Court, without fixing the times, is not giving the Court that information which they ought to have. Therefore, as Capt. Digby is not capable of ascertaining times, it will render one or two questions which I meant to make to him unnecessary. But as he has said that he saw a cluster of ships about the Victory, without knowing what ships, or how many,

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and that is a very material question to me, I beg, I intreat, and I demand of him to say, if he can, at what time that was?

A. It was not long after the Vice-Admiral of the Blue had done engaging.

Q. Did you see at what time the Vice-Admiral of the Blue had done engaging?

A. I was told so.

Q. At what hour was you told so?

A. I do not know.

Q. When you were to leeward of the Victory on the starboard tack, in any part of the afternoon from three to six, were there any other ships of the British fleet to leeward near you?

A. They were.

Q. Can you say how many?

A. There were at one time four, if not five.

Q. Do you recollect their names?

A. I think one was the Robuste; the Sandwich I think was another. I do not recollect with certainty the others.

Q. In this time, from three to six, did you ever notice the Victory to lead down from the wind to you and those ships?

A. I have said before that I was so very much employed, that I looked but very seldom, but I think she did lead down.

Q. Do you recollect at what part of the time, between three and six, those ships, or any part of them, left you, and which of the ships they were?

A. Upon my word I cannot, but they left me one after another.

Q. Can you say at what hour of the evening of the 27th you saw the Victory without the signal for the line of battle flying?

A. It

A. It was just as I was wearing, after I stood into the fleet, that my officer came and told me that the signals were down; whether I looked myself or not, I cannot say.

Q. At what time?

A. I believe between seven and eight.

Q. Was it near dark?

A. It is impossible at this time to recollect. I can so far recollect, that I am sure it was within half an hour or so of being dark.

Q. How soon at this time, after you had wore, was you a-stern of the Vice-Admiral of the Blue?

A. Very soon after.

Q. Did you preserve that station, and keep sight of the Vice-Admiral of the Blue's lights all night?

A. Nearly.

Q. Was you near the Formidable at day-light?

A. I was.

Q. At what distance, and how did the Victory wear from the Ramilies at day-light?

A. She was upon my lee-bow, and near two miles from me.

Q. How was the wind next morning?

A. W. N. W.

Q. Did it blow fresh in squalls?

A. More moderate than it was the day before, though it did blow fresh in squalls.

Q. Was there a large swell?

A. There was a good deal of swell.

Q. Was this wind favourable to carry ships to the port of Brest?

A. It was.

Q. Was your ship in a condition to chase, as a man of war should chase, and entangle herself upon a lee-shore, on an enemy's coast?

A. She was not.

Q. After,

Q. After I had brought the fleet to, with the ships heads to the Northward, on the morning of the 28th, do you recollect that I made any signal?

A. I do not recollect the signals nor the time; but I recollect there were ships made signals, that they wanted to set up their rigging, but cannot say when?

Q. Was your's one of these ships?

A. I did make that signal after seeing many others had made it.

Admiral Roddam. What were your reasons for thinking that the French did not mean to come to an engagement after the first day?

A. Because they might have come to action if they had chose it.

President. As you say there were ships to the leeward, had the English Admiral formed the line on the 27th in the morning, would it have been in the power of any part of the English fleet to have brought on the engagement that day?

A. I do not think they could.

Sir Hugh Palliser. If the signal had been made for the line of battle, in forming of it, would it have been necessary for the Admiral to have borne down to the wake of the Vice-Admiral of the Red's division? And would not the Vice-Admiral of the Red's division engage in that case, in like manner, as they did, excluding only the Duke, that was a long way to leeward?

A. A line of battle, in my opinion, always retards. Had the signal been made, the Red division must have shortened sail.

Q. If the French had not intended to bring on the action, would they have tacked the second time, edged down and tacked us in the situation we were in?



A. I have not said that the French did not mean at that time to attack us; they did not appear to mean it in the morning.

Q. If the French fleet had not intended to come to action, could they not have avoided it that day?

Q. I ask you whether your ship was not one of my division?

A. It was.

Q. You describe your situation in the action to be next to the centre. I ask you, whether there were any other ships in the same division, in the same situation, in consequence of the signal to chase?

A. I do not know of any others in the same situation, because I do not know of any that were a-head of the Admiral.

Q. You have described the situation to be such, that the ships could support each other.

[Here Sir Hugh was reminded of the real words of Captain Digby; he said, that he could answer only for his own ship, which was supported, he said, by the Admiral and his second.]

Sir Hugh Palliser. If the ships that chased, and your ship, had engaged with the centre division, would the other ships of the Vice Admiral of the Blue's division have been in a situation to support each other equal to the rest of the fleet?

A. I did not chase; and as I was a-head of the Admiral when the chasing ships engaged, as I believe they did, astern of me, I do not know their situation, but that they were a good way to windward just before I engaged.

Q. You have not said what must have been the situation of the rest of my division?

A. I have not said where the chasing ships engaged; but if they all were separated from their division, they certainly could not support it.

Q. You

**Q.** You have described, that the French fleet was not exactly in a line of battle ?

Admiral Keppel observed, that he did not say exactly. And

Sir Hugh Palliser changed it, not in a regular line of battle ; did you observe one ship to leeward, and shut out from it by other ships closing, to windward, of which one of our ships, supposed to be the *Courageux*, passed between her and the French line ? Did you observe any other ship of the French fleet so far out of the line ?

**A.** There was one ship to leeward of the rest, but I cannot judge of the distance of the other.

**Q.** Did you observe that the irregularity of the French line was more than could have been expected from their having been engaged with the ships that passed before you ?

**A.** There was an irregularity in their line, but what it proceeded from I do not know.

**Q.** I ask you, Whether or no the Admiral, with his own division, and that of the Vice of the Red, and such of the Vice-Admirals of the Blue's as had joined, did tack and double when the enemy did continue the action ?

**A.** The Vice-Admiral of the Red, and his division, passed to windward of me just as I came out of action ; but I believe the action was not renewed upon that tack.

Admiral Keppel. I have no objection to all these questions, but I conceive that the Vice-Admiral has no right to cross examine upon my questions. It misleads the evidence, though it cannot affect me ; and forces me to ask new questions.

Sir Hugh Palliser. Did the Admiral and the other ships with him renew the action ?

**A.** I believe not.

Q. Did the Admiral, with the whole of the ships, keep so near to the enemy as to be ready to renew immediately the engagement, when the Vice-Admiral of the Blue came out of it, or to support him while he continued engaged with the few ships that were with him?

A. I have already described my situation to be such about that time, the fleet being between me and the French fleet, that it was impossible for me to know how they were situated.

Q. I ask you whether you mean to say that the Admiral did so, or did not do so?

Admiral Montagu. You must not interrogate a witness what he *means* to say. Ask him to say yes or no at once.

Q. Did he do so?

A. Do what?

Q. Keep at such a distance as to be able to support me?

A. I have declared that I do not know.

Admiral Keppel. I beg to know whether the Vice-Admiral has a right to cross-examine upon my questions. He obliges me to make other questions, and to take up more of the time of the court than I wish to do.

Admiral Montagu. He has no right to do so. It is *unfair* to the prisoner, unfair to the evidence, and tends to make him perjure himself, since it is impossible for him to recollect every word. I therefore beg that we may retire to decide on the propriety.

Before they went Captain Drake asked the following: Was it the favourable change of wind for the English on the 27th, or the inclinations of the enemy to come to action?

A. I believe the favourable change of the wind helped. As I was in the rear, I cannot determine the situation of the van with the enemy.

After

After the Court had been out about half an hour, they returned with this resolution, "That neither party should examine his own witness a second time, till after the whole of the evidence be gone through."

Captain WINDSOR of the Fox, was called and sworn.

Q. Did Capt. Windsor receive any orders from the Admiral on the evening of the 27th of July.

A. Yes, I did.

Q. At what time.

A. A little before five.

Q. Please to inform the Court what those orders were?

A. The orders I received from Admiral Keppel were to stand to the Formidable, with Admiral Keppel's compliments to Sir Hugh Palliser, and to acquaint him, that he only waited for Sir Hugh Palliser and his division bearing down into his wake for him to renew the attack.

Q. Did you commit these orders when you received them into writing?

A. No, Sir.

Q. From whom did you receive these orders?

A. From Admiral Keppel.

Q. Did you go on board the Victory to receive them, or was it by hailing?

A. I did not go on board, the message I received was under the Victory's stern.

Q. Was it from the Admiral himself?

A. Yes, Sir.

Q. Have you had any conversation since with any person to assist you in remembering the precise words of the order, as you did not take it then in writing?

A. No.

Q. At what time did you deliver your message?

A. I



A. I suppose nearly about half past five.

Q. Who received the message from you ?

A. I repeated the message twice to you.

Q. In delivering the message, did you absolutely make use of these words, only waiting for me to renew the attack, or only inform me that the Admiral wanted the ships of my division in his wake ?

A. I have already repeated to the Court the message word for word, as I delivered it to you.

Q. What answer did I make to you, Sir ?

A. That you understood me very well.

Q. Did I not say, I desire you will acquaint the Admiral I have repeated the signal for the ships to bear down ?

A. I did not hear any such message delivered from you.

Q. Were not a number of ships pennants then flying on board the Formidable ?

A. To the best of my recollection, the Formidable threw out several pennants after I had delivered the message.

Q. What sail had the Victory up when you received the message ?

A. I do not recollect.

Q. Can you recollect what signal she had flying ?

A. I cannot charge my memory.

Q. Do you remember your ship's company giving three cheers to the Formidable ?

A. Yes, I do, in answer to three your ship's company gave the Fox.

Q. Are you sure that it was the Formidable or the Fox cheered first ?

A. I am sure the Formidable.

Q. What distance was you from the Formidable when you spoke to her.

A. So very near as to have our sails becalmed.

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Admiral Pye. Were there any signals made on board the Victory for the Vice Admiral of the Blue and his division, to bear down into the Admiral's wake before you received that message, and at what time?

A. The distance of time is such I cannot recollect.

Admiral Montagu. Did you see Admiral Keppel with the British fleet, run away from the French fleet, the day of the action, or the day afterwards.

A. No.

*A few variations between the Letter signed by Sir Hugh Palliser, and the Evidence, upon Oath, of the Hon. Captain Windsor.*

*Sir Hugh Palliser's Letter.*

At night the Fox frigate, Captain Windsor, came to the Formidable, with a message from the Admiral to me.

That he wanted the ships of my division to come into his wake, but said not a word of his waiting for them in order to renew the attack, as is falsely asserted.

*Capt. Windsor's Evidence.*

Question from Sir Hugh Palliser. At what time did you deliver your message?

Answer. I suppose nearly about half past five.

(N. B. On the 27th of July.)

Question from Sir H. Inform the Court what the orders were.

Answer. The orders I received from Admiral Keppel were to stand towards the Formidable, with Admiral Keppel's compliments to Sir Hugh Palliser, and to acquaint him, that he only waited for Sir Hugh Palliser and his division's bearing down into

into his wake for him to renew the attack.

Question from Sir H. Palliser. Who received the message from you ?

Answer. I repeated the message twice to you.

Question from Sir H. Palliser. In delivering the message, did you actually make use of the words waited for me and the ships of my division to come into his wake and renew the attack ; or only that the Admiral wanted the ships of my division into his wake ?

Answer. I have already repeated the message to the Court, word for word, as I delivered it to you.

Question from Sir H. Palliser. What answer did I make ?

Answer. That you understood me very well.

He was answered by myself from the stern gallery in the following words—acquaint the Admiral that I have repeated the signal for it.

Question from Sir H. Palliser. Did I not say, I desire you to acquaint the Admiral, I have repeated his signals for the ships to bear down ?

Answer. I did not hear any message delivered from you.

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Sir Hugh said it was night when the Fox came to him (vide the letter) if it was night how could Capt. Windsor see the pennants flying?

And was going to say, tell him that the moment my ship is under command, I will endeavour to get nearer to him; but the company of the frigate interrupted by giving three cheers, which the Formidable's people returned.

It then blowed fresh, was dark, and the frigate

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Question from Sir H. Palliser. Were not a number of ships pennants flying on board the Formidable?

Answer. To the best of my recollection the Formidable threw out several pennants after I had delivered the message.

Question from Sir H. Palliser. Do you remember your ship's company giving three cheers to the Formidable.

Answer, Yes, I do, in answer to three your ship's company gave the Fox.

Question from Sir H. Palliser. Are you sure it was the Formidable or the Fox cheered first?

Answer. I am sure it was the Formidable.

Question from Sir H. Palliser. At what distance was you from the Formidable when you spoke to her?

Answer. So very close as to have our sails becalmed.

Question from Sir H. Palliser. What time did you

Sir



passed so quick, that there was no time to say any thing more which could be heard.

you deliver your message? Answer. I suppose nearly about half past five.

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*January 14.*

The Court was resumed at ten o'clock in the morning, and Captain Hood, of the *Robuste*, was called upon and sworn.

Admiral Keppel. Mr. President, I know it is expected by some, that after the history which the Court had received at the alterations made in Capt. Hood's log-book, by his order, since it was known that my trial was to come on, I should object to his evidence. But anxious as I am to hear the testimony of all that served aboard my fleet, respecting the operations of that fleet, I rather wish to hear Capt. Hood's evidence.

Sir Hugh Palliser. I beg Capt. Hood to inform the Court, what those alterations were before he gives his evidence.

Capt. Hood. Before I proceed to give evidence, I beg the indulgence of the Court for leave to explain the nature, the sum, and the substance of the alterations in the log-book of the *Robuste*. I flatter myself not only this respectable Court, but the public at large, will be well satisfied with the innocence of it, and, I trust, they cannot be construed in any shape to affect the one side or the other.

For my own part, I never conceived a ship's log-book to be considered as a material evidence, much more did I ever expect that the words I should put into my log-book would be considered as a charge—God forbid such a thing should be conceived by my log-book!—The bearings, winds, the course, the distance in the *Robuste's* log-book, stand unaltered; the

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corrections in it respect the narrative part only, the errors respected the narrative part only, and when I found that the ship's log-book was likely to be produced to the Court, perhaps *upon myself*,—upon that account, not knowing but that I should appear here a prisoner, instead of an evidence, I judged it proper to revise and correct it for the credit of the ship, for the sake of all her officers—This was not done, Sir, *in private*, but known to *every* officer in the ship, that it was to set forth a fair and faithful representation of the transactions upon the 27th of July.

Sir, I stand here an attacked man,—from the 11th of August to the present hour my honour has been attacked, my honour has been wounded—I have in papers of that date read I was put under arrest for disobedience of orders—In other papers I was broke; since which letters have been circulated to the greatest characters in this kingdom, charging the rear division with the loss of that day—the words are the information I received from one of the first men in the kingdom,—that had the rear division done their duty half as well as the Van and Center, the Victory would have been obtained; since which there has been many anonymous publications, which I very much despise—and was alarmed greatly, when, in a public assembly, the whole of that division seemed to be aimed at me—it became incumbent on me, I thought, to revise my log-book, that it might be a record *for the benefit of my officers*, when ever I came to be put on my trial—If I have erred, I have erred innocently—The master of the Robuste has refused here to take the oath that was administered to him—I applaud him for it—it was acting like an honest man; with a conscientious regard to truth—whenever he gives his evidence here, (if he is admitted to give it) I am persuaded it will have the full weight.

He has, as I am informed (but only take it for information) offered at the same time here to swear to the *truth* of the *log-book*.

The Court will give me leave to make one observation upon the credibility of the log-books, and which in the opinion of the law is best, the men who swear that the log-books have not been altered from such a period to such a period, or the man that acknowledges an alteration, and swears to the *truth of the log-book*.—I am no lawyer, but common sense tells me the one is full as strong evidence as the other.—But I do not think log-books, God knows, kept in the manner they are kept, that they are to be taken as evidence; they serve to assist the memory; and I shall beg leave to call the master of the *Robuste* to answer such questions as the Court shall think proper to put to him (if they should judge it necessary) in order to clear up, to elucidate this business: and, I trust, that when the whole is investigated, that I shall not be considered to have done any thing to the prejudice of that Hon. Admiral, nor have done any thing in the smallest degree dishonourable on my part.

I beg also Lieutenants Pitt and Lumley, if the Court approve it, may be called in to produce their logs, or journals, taken from the original log-book original stating of the matter—the Court then will be in full possession of the alterations, and to their judgment, and the judgment of the public without doors, I submit my honour.

Sir, I must beg leave to say one thing more which strikes me very forcibly as an officer—I think, as far as I understand the service, that I am authorised to do it,—am called upon to do it.—By his instructions the Court must know it well, that he is to correct his day's work and correct his log-book—why, it is done perpetually?—Is it criminal?—There is no law against it,

it, there is no criminality in the thing, unless the words it contained were criminal. — Sir, I declare, if I have not that power of revising and correcting the log-book, whenever it shall be found erroneous, my honour, my reputation, and my existence in the service depending upon it; if that is taken from me, I declare here I never will again set my foot on board a King's ship.

*The Alteration.*

The first alteration related to the sending out the ships to chace in the morning—my original log-book made the Vice-Admiral send out the ships to chace, instead of the Admiral—that was corrected by saying the Admiral made that signal for us, and several ships to chace to windward.

The second alteration speaks more fully of the Admiral's signal, made in the afternoon for ships to bear down.

The other alteration is the seeing the three French ships in the morning, which was omitted in the original log-book—how it came to be omitted, God knows, I am sure every body in the ship saw them—I know I did.

The log-book before the Court, speaks of the Robuste bearing down in the evening to her station, as well as a disabled ship could do, the Admiral making much sail.

Admiral Montagu. What hour was it in the afternoon that you bore down?

Capt. Hood. It was at night.

Admiral Keppel. I beg the indulgence of the Court to ask a few questions respecting the log-book.

I would ask you, where is the entry of the original log-book respecting the 27th of July?

Sir



Sir Hugh Palliser objected to his asking.

Sir Hugh Palliser. What situation was the French fleet on the night of the 23d, with respect to the English fleet, and on what tack were they standing?

A. The French fleet were to leeward, standing on the starboard tack.

[He proceeded to ask him the several questions respecting the bearings, and apparent intentions of the several fleets on their first seeing each other, in the same manner as he had before asked other witnesses, and received the same answers.]

Q. Can you recollect the wind and weather, during the 24th, 25th, and 26th?

He was permitted to consult his log-book.

Q. During those days would it not have been very disadvantageous on account of weather, for the French to have attacked the British fleet, as they must have fought their lee guns.

A. The wind and weather was squally, as far as I recollect, and the sea rough. It would therefore have been very disadvantageous for any fleets to have engaged during those days.

Q. Were not the ships in the morning of the 27th scattered, by which I mean being in different bearings and distances?

A. I was not on the deck till after the signals were made from the Admiral for the Robuste, and I think five other ships of the Vice-Admiral of the Blue's division to chase to windward, consequently I cannot speak to the state of the fleet before that period.

Q. Did not that signal make the fleet more dispersed and separated than they were before?

A. I think these six ships chasing to windward from between five and six in the morning till ten, carrying as much sail as their duty obliged them to,  
must

must of course increase the distance from the centre division, and thereby may be said to be more scattered.

Q. Did not that signal leave the Vice-Admiral of the Blue with four ships only?

A. It consisted of ten sail. I have given the Court an account of six of them being ordered to chase to windward, consequently there could remain but four with the Vice-Admiral.

Q. What time did the British fleet tack altogether by signal?

A. I wish, in the course of my evidence, not to be confined to time, it being very much out of my power to do. As near as I can recollect, the signal was made about ten o'clock.

Q. Did not the Victory begin to engage the French Admiral in the centre of their line?

A. The Robuste chasing from the fleet that morning, threw her at too great a distance for me to judge precisely of that event.

Q. Had you an opportunity of seeing the Formidable come into action?

A. I saw the Formidable go into action, but cannot say the time.

Q. Did you see several of the ships of the French van fire at her before she began a close engagement herself?

A. I know that the French ships fired a great many shot at the Robuste, which she did not return till she came near enough to do execution; and I judge of the Vice-Admiral's conduct from my own.

Admiral Montagu. Is that an answer to the question? We do not desire your judgment of the matter. Did you see the shot fired at the Formidable? Speak what you saw with your own eyes, and not what you judge it might be.

Q. Did

Q. Did you see the Formidable close engaged with some of the ships of the French line a-head of the Admiral?

A. I cannot speak positively with what ships she engaged.

Q. Was not the Formidable as close and as long engaged as the Victory?

A. I cannot say how long the Victory was engaged.

Q. Was not the Victory, when engaged, supported by all the ships of the Admiral's division, and by some of the Vice-Admiral of the Blue's?

A. I take it for granted, that all the centre division supported their flag. I have been informed—

Admiral Montagu. Speak from your own knowledge, the taking it for granted will not do.

A. It is impossible, while in action, to see what other ships are engaged.

Q. Was your ship one of them?

A. Yes.

Q. Can you name any other?

A. The Terrible, the Elizabeth, the Egmont, the Worcester, and America.

Q. Did the Admiral, with the van and center divisions, and such ship of the Vice of the Blue's division as had joined after passing the rear of the enemy's line, immediately wear and double upon the enemy, and continue the engagement?

A. I do not know whether they were attacked, I did not see them.

Q. Did the Admiral keep so near to the enemy, after he had passed, as to have resumed the engagement when the Vice of the Blue came out to support him while in it?

A. I do not know.

Q. At

Q. At the time when you came out of the engagement, how far was the Admiral distant from the French rear?

A. I judge the Admiral might be within two miles of the rear of the enemy.

Q. Did you observe at that time which way his head was?

A. He was standing towards the enemy.

Q. Did you observe the Admiral unbend his main-top-sail, while standing to the enemy?

Admiral Keppel. I have before admitted this question. It has been asked every witness, and always admitted by me.

A. I do not know.

Q. Did you observe the Formidable wear, and lay her head towards the enemy?

A. I did.

Q. Was not the Victory and the body of the fleet standing towards her and the French fleet?

A. They were.

Q. Did you afterwards observe some of the French ships wear and stand towards the Formidable?

A. I did not see the French ships wear at the time the Vice-Admiral alludes to.

Q. Did you observe her wear again and stand towards the Victory?

A. I did not.

Q. Did you see her meet the Victory?

Admiral Montagu. I beg to know the meaning of this. Did you see the Victory and Formidable meet one another?

A. No.

Admiral Montagu. That sets the matter to rights; for the witness positively said before he did not see the Formidable stand towards the Victory, and therefore they could not meet.

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The Captain said, after the *Formidable* came out of the action she wore, and stood again towards the enemy, while the Admiral kept aloof to repair the damage sustained in the engagement; that, as he had the windward, and consequently the command of the enemy, he might return in a few hours with effect.

Q. From the very brisk fire kept up, and the very distinguished good behaviour of all our ships which did get into action, have you any reason to suppose that the French fleet did not suffer in proportion to the English?

A. They did suffer.

Admiral Montagu. Did you observe the masts and yards of the French fleet as much disabled as our's?

A. I do not think that either the English or French fleet suffered by their lower masts being carried away.

Admiral Montagu. Do you not think a ship may be so far disabled without any of her lower masts being disabled, as not to be capable of pursuing an enemy for some time?

A. Certainly.

Admiral Montagu. You have said that the *Robuste* was disabled after she came out of the action?—Please to relate to the Court the state she was in after the engagement; and how many hours, or what time it was before she was able to pursue the enemy, provided the Admiral had thought proper so to do?

A. Shall I relate every particular?

Admiral Montagu. I do not mean every brace and bowline, in which running rigging is included, but state the material defects.

The *Robuste* had one large shot through her mains, one through the center of her foremast, and another oblique, two in the bowsprit, one immaterial one in the mizen-mast, her main top-sail yard was shot away, and

and her fore-top gallant mast was shot in two. She received two shot in the mizen-yard, under and over water eleven shot, three or four under water, one very dangerous; thirteen in her upper works. Her main-top-mast was shot in two or three places, but not to prevent the ship from carrying sail upon it. I cannot speak the condition of her sails, they were so much shot; most of her braces, bows, and running rigging was shot away; many of her lower and top-mast shrouds. One of the shot, between wind and water, was a six and forty pound shot; it struck the ship five or six feet under water, and took place directly against a hollow beam, in consequence of which the ship made a great deal of water. I had given directions to wear my ship immediately on the Formidable's wearing, but the carpenter came and told the first Lieutenant it was impossible to wear. I forgot to say that two of her stern posts on the weather side, were shot away. My answer to that was, it was an evil I was obliged to submit to, and I continued on the tack, my intention being to renew the fight along-side the first ship I could come at.

Admiral Montagu. We wish only to hear the defects of your ship, Captain, and not a relation of your valour and intentions. It is foreign to the question.

Sir Hugh Palliser insisted that the last part should be put down, to prove what might be done.

Admiral Keppel begged it might be so put down, though out of order.

Admiral Montagu. How long was it before your ship was in order to renew the engagement?

A. There was very much water in the ship, and the people were very much alarmed.

President. What time was it before you would have been in a condition to renew the action?

A. It was full seven o'clock in the evening, or it might be eight o'clock, before the leak was stopped. I tacked my ship at four o'clock.

Q. Were your sails and rigging at that time in a condition to renew the attack?

A. I should certainly have renewed the attack as soon as my leak was stopped.

Q. In the condition your leak was in when you tacked, do you think your ship was fit to have renewed the attack?

A. I do not think she was fit to fight in a line of battle.

Admiral Arbuthnot. If the Admiral had thought fit to have renewed the attack when the French line was broke, could you have obeyed his signal and gone down to the enemy in the condition you were in?

A. I could not.

Admiral Montagu. From their relative situation, as you have described them, do you think the British Admiral was running away from the enemy?

A. At that time there was no appearance of a flight.

Sir Hugh Palliser objected to the words running away.

But Admiral Montagu insisted on his question being put in his exact words, in conformity to the 4th article of the charge against Admiral Keppel.

Q. Did the Admiral run away at any other time?

A. There was nothing in his conduct at any time which indicated, in the most distant manner, a flight. In the morning he pursued them.

Admiral Montagu. Do you think when the French fleet were on a parallel line with the British and a-stern of them, did they bring to leeward, crowd all their sail

fail to pursue the British, who were, as you have described them, to windward?

A. The English, in that parallel situation I have described, were then, and had been during the whole afternoon, endeavouring to form a line of battle, for which the signal was out.

Admiral Montagu. When the signal was made for your ship, &c. more to chase to the windward, did you think you were to make the best of your way to the French fleet?

A. The chasing to windward increased the distance from our center, and brought us nearer to the enemy.

Q. Should you then, if the Admiral had given you no other orders, have engaged the enemy?

A. Not without his signal.

January 15.

Captain HOOD's *Examination, continued.*

Captain Duncan asked.

Q. Was your ship on the morning of the 28th in a condition to have chased, as a man of war should do, when his signal is made to chase?

A. The Robuste in the morning of the 28th was not in a perfect condition to chase.

Admiral Montagu asked.

Q. Do you think, supposing the British fleet to sail equally with the French fleet, there was a probability of the Admiral's coming up with them before night, provided they continued to fly from him?

A. I think not.

Q. Supposing the British Admiral had chased the French fleet, and seen them go into Port, supposing himself to be within four leagues of the French coast, and a gale of wind had come on, would not the British



tish fleet have been in great danger in the condition they were in, then making the enemy's shore a lee shore?

A. I certainly think the disabled part of the British fleet would have been in danger.

Q. Had the French fleet, after the action of the 27th when to leeward, continued to lay too till day light the next morning; do you not think that Admiral Keppel would have borne down and engaged them, provided the ships were in a proper condition to do so?

A. He certainly would.

Q. Was the enemy's shore a lee shore, as the wind was on the 28th in the morning?

A. The wind was W. N. W. in the morning of the 28th, it blew directly in upon the port of Brest and the French coast.

Q. Was not that a lee shore?

A. It was.

Admiral Keppel then put the following questions:

Q. Where is the entry of the *Robuste's* log book, as it stood originally of the 27th and 28th of July?

A. I really do not know.

Q. Did you see any rough minutes of those two days transactions, before they were entered in the log book, and were they approved by you?

A. I certainly did see it in a rough paper, and not knowing at that time but that it was correct, it was inserted in the log book.

Q. Was it inserted by your approbation?

A. I directed it to be wrote in the log book.

Q. When was it that the alterations and additions were made?

A. I do not remember the day, but the master having been before the court, I submit the day to his recollection.

Q. As

**Q.** As you cannot be precise as to the day, you can say whether you had then heard of the Court-Martial intended to be held on Admiral Keppel?

**A.** When I took into consideration the alterations or corrections in the *Robuste's* log book, I had not heard of any intention of Admiral Keppel's being to be tried.

**Q.** I would ask Captain Hood, when he ordered the alterations and corrections to be inserted, had he not then heard of Admiral Keppel's Court-Martial?

**A.** I had not heard of Admiral Keppel's Court-Martial, but it was rumoured here.

**Q.** What do you mean by a rumour of a Court-Martial, which you had never heard of?

**A.** What I mean by rumour is, that a great many people were talked of to be tried, as common conversation.

**Q.** When the alterations were actually made in your presence, had you then heard of Admiral Keppel's intended trial, or not?

**A.** I have already said I had not heard of Admiral Keppel's intended trial.

**Q.** Upon the oath you have taken, am I to understand you had not heard of any intended trial, when you directed those alterations to be inserted?

**A.** I believe I have answered that question already.

**Q.** It has not been clearly understood, and I must beg you will answer straight and direct.

**A.** I heard it as common conversation, but nothing further—I could have it no other way but common conversation.

**Q.** Had you not heard when the alterations and additions were inserted, that Sir Hugh Palliser had charged me with some offence?

**A.** I never heard of any charge—I don't know what the offences were—it had not come out, none came to my knowledge.

**Q.** Had

**Q.** As

Q. Had you not then heard that Sir Hugh Palliser had then exhibited a charge against me, though you did not then know the particulars of it?

A. I have already acknowledged that I had heard of the intended Court-Martial, therefore, if there was to be a Court-Martial, there must be some charge.

Q. Had you ever conversed, or corresponded with Sir Hugh Palliser, directly or indirectly, on the subject of Admiral Keppel's trial, before you had made the alterations in your log book?

A. I never conversed with Sir Hugh Palliser upon that subject.

Q. Nor corresponded?

A. Letters passed, but not relative to the charge.

Q. Have you conversed with him on the subject of the log-book, or corresponded?

A. No—I never have.

Q. What then led you to discover, four months after the transaction, any error in that state of the transactions which you did not observe at the time?

A. I was led to the discovery of the truth, for the sake of myself.

Q. Did your original log-book state that the Admiral was making much sail on the evening of the 27th?

A. I do not recollect that it did.

Q. Does Captain Hood know that it did not contain it?

A. I have before declared that it did not.

Q. At what hour is that insertion made—what hour does it relate to?

A. It relates to part of the night, not any part of the day.

Q. What hour is it put to?

A. It is put as far as I recollect to part of the first watch, and part of the middle watch, but I don't believe

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believe any particular hour is put down—it relates to a narration—but as I am called upon to declare, I will do it to the best of my recollection.

Admiral Keppel then said,

Mr. President. As that alteration in Captain Hood's log-book tends to affect my life, I shall ask him no more questions.

Sir Hugh Palliser then said, with much warmth,

Mr. President, The cross examination of Admiral Keppel, tending to attack the credit and character of Captain Hood, I think it proper to give notice, that in the future progress of this trial, I shall examine the Master of the *Robuste*, and other witnesses, to resist so cruel an attack on the character of a gentleman of his services and merits, and to confute the invidious—here Sir Hugh was interrupted by the Court; and upon Sir Hugh's contending that Admiral Keppel had been too personal against Captain Hood,

Admiral Montagu said,

Surely, Sir Hugh, Admiral Keppel has a right to ask such questions as may save his life—I do not think that can be considered as an invidious attack upon Captain Hood's character.

The Court then resolved to erase Sir Hugh's speech to the President, out of the minutes.

Admiral Montagu then said,

Upon the whole of the transactions on the 27th and 28th of July, relative to the British fleet, did it appear to you, as an old experienced officer, that Admiral Keppel, by his conduct on either of those days, tarnished the honour of the British navy?

A. I have long had the honour of knowing the Honourable Admiral, and I still respect him, notwithstanding my evidence will not be further required—his character is above my praises—I have given my evidence as far as it is gone, with honour and integrity

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*Mr. Graham.]* ( 94 )

—the Court must therefore judge, and decide upon that question.

MR. GRAHAM, Purser of the *Arethusa*, was next called and sworn. Sir Hugh Palliser, perceiving he had minutes in his hand, questioned him concerning their authenticity and originality. He answered, that the original log-book, made for the use of the quarter-deck, was lost about three weeks after the action on the 27th, and that those he produced were an exact copy as far as they went, of a copy truly taken from the original log-book : but that as Mr. Graham took them for his own satisfaction, and not for public inspection, he had, the better to distinguish them from each other, entered the general ones, particularly as to their order, and also as to the time when they were made ; but the pennants he had only entered in their rotation, as they stood in the original log-book. The justice of these minutes being thus ascertained, a motion was made for reading them. This was opposed by Captain Duncan, who said such a proceeding would be informal, and contrary to the practice which had hitherto prevailed on the present trial, or at former Courts-Martial ; but that the witness, when questioned concerning any matter contained in his minutes, might, to assist his memory, refer to them. Here the Judge Advocate also observed, that the reading Mr. Graham's minutes would answer no purpose, as they were undated.

Sir Hugh Palliser then asked Mr. Graham what was the first signal made on the 27th of July ?

A. The first signal made was for tacking. I believe that was about half past ten in the morning ; when I say it was made, I mean it was repeated on board the *Arethusa*.

The examination was continued, as near as we could collect, in the following manner :

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Q. What was the next?

A. To engage, at five minutes past eleven.

Q. Does the time the signals were hauled down, stand in your book against them, or are they placed not against the signals, but apart?

A. They stand against the signals.

Q. When was the signal to engage hauled down?

A. Twenty-six minutes after one.

Q. What was the next signal as it stands in your book?

A. A signal for wearing two minutes after one.

Q. What was the next?

A. A signal to speak with a particular ship to come within hail, fifty minutes past one.

Q. What ship's signal was it?

A. The Proserpine.

Q. The next?

A. The Union, with a blue flag, and a red cross; one prior in order, though not in my book, to that for the Proserpine.

Q. When was it hauled down?

A. About twenty minutes past one.

Q. When hoisted again?

A. About thirty minutes past one.

Q. When again hauled down?

A. On board the Victory I cannot say, but on the Arethusa at day-light next morning.

Q. What was the next after the blue-flag with a red cross, for the line of battle?

A. A blue pennant, at thirty minutes past two.

Q. What the next?

A. A yellow pennant at the main top-mast-head.

Q. At what time?

A. I have not the time against the pennant.

Q. What the next signal in order?

A. A signal for ships to windward to bear down into the Admiral's wake.

Q. At what time was it?

A. Twenty-four minutes past three.

Q. When was it hauled down?

A. At thirty minutes past three.

Q. When hoisted again?

A. Thirteen minutes past six.

Q. When hauled down again?

A. At day dawn next morning.

Q. When was the next?

A. Union and blue flag with a red cross at the mizen backs for ships to windward to form a line a-head at cable's length: it was at thirteen minutes past six o'clock.

Q. What the next in order after twenty-four minutes past three?

A. A fellow pennant at the main-top-mast-head for the Proserpine.

Q. What the next?

A. A blue and white striped flag at the main-top-mast-head, thirty-three minutes after four, for a particular ship, I think to make more sail.

Q. What ship's pennant was out?

A. A red one. The flag was hauled down directly.

Q. What ship's signal was out; was there any?

A. I believe not.

Q. Was the Duke's signal then out?

A. There were several pennants out, when the Spanish flag was at the main-top-mast head, but none while the blue and white flag was out.

Q. Do you recollect what ships pennants they were?

A. I can tell their order and colour, but not the time of them.

Q. When was the Spanish flag hoisted?

A. Seven minutes past four.

Q. What was the first pennant let fly afterwards?

A. A red one at the mizen-mast-head; I don't know when, they were flying together.

Q. What

*Q.* What was the next?

*A.* A blue one at the starboard mizen-top-sail-yard-arm.

*Q.* Do you know the distance of the time between them?

*A.* No.

Sir Hugh Palliser. In the original minute-book was the time as well as names set down?

*A.* There was a column for it, but I believe the significations were not inserted.

*Q.* Does it contain them in order?

*A.* The first was the blue one at the starboard mizen-top-sail-yard-arm, and a yellow one at the main-top-sail-yard-arm.

*Q.* Are they all mentioned in the original log-book?

*A.* Yes. There are two signals intervene between them, and several others which were flying with the Spanish flag.

*Q.* Were the others with their ships and times ascertained in the original log-book?

*A.* The times were, but I cannot say as to the names of the ships and their order.

*Q.* Why have you omitted both the names and pennants that were out when the Spanish flag flying?

*A.* I have given a reason for it by stating the intervention of two flags.

*Q.* What were those two flags?

*A.* Two flags that were hoisted by mistake.

*Q.* Can you name the pennants after thrown out?

*A.* Yes. A red pennant at the main-top-sail, a blue one at the same place, the same at the larboard yard-arm, a white at the fore-topmast-head, a blue at the starboard-main-top-sail-yard-arm, a red one at the same place, a blue one at the mainmast-head.

*January*



January 16.

At ten o'clock in the morning the Court was resumed, when

Mr. Graham was again called to the bar, when upon examination he stated some mistakes that were in the copy of the signals which he had given the day before.

Admiral Keppel. Have I seen you or your minute-books, or conferred with you about either of them?

A. You have not.

Ordered to withdraw.

Captain ALLEN, of the Egmont, was then called by Sir Hugh Palliser as a witness in support of the charge.

Sir Hugh Palliser. When did you first see the French fleet?

A. I cannot justly say.

Q. On the day when you first saw them, what time of the day was it?

A. Between two and three o'clock I think.

Q. During that afternoon, and in the evening, did they appear to you to be forming a line of battle?

A. No.

Q. How were they situated with respect to the British fleet?

A. It is a long while since, and I cannot charge my memory with any thing of that sort. My log-book and journal is at Plymouth.

Q. Do you recollect their situation the next morning?

A. I do not.

Q. Do you remember when you first saw them on the morning of the 27th.

A. I do.

Q. About

Q. About what time ?

A. Near five o'clock.

Q. When did you first discover them to be in a line of battle ?

A. Not at all.

Q. On what tack were they ?

A. On the larboard tack.

Q. At what time ?

A. Between five and six.

Q. Did they appear to you at no time to be in a line of battle ?

A. No.

Q. At that time what was the situation of our fleet with respect to each other ?

A. I cannot particularly answer that ; being far to leeward I could not distinguish the situation of the rest of the ships to windward.

Q. Do you remember the Admiral's making a signal for several ships of the Vice-Admiral of the Blue's division to chase to windward ?

A. I do.

Q. At what time ?

A. Near six o'clock.

Q. Do you remember the names of any of the ships ?

A. The Egmont was one.

Q. Can you name any of the others ?

A. The Terrible ; I do not recollect any more.

Q. Were their several pennants up ?

A. I only recollect these two.

Q. Did not a number of ships make sail and chase at that time ?

A. There might be three or four.

Q. Did those ships, whatever their number were, separate and scatter that part of the fleet more than they were before.

A. They

A. They made a greater distance, no doubt, but they were not scattered.

Q. Did they all preserve an equal distance from each other while chacing?

A. No.

Q. When did the French fleet tack from the larboard to stand to the starboard?

President. When you saw the signal thrown out for those ships to chace, what did you conclude, in your mind, was the cause of that signal?

A. To get to windward, and close with the Admiral.

Sir Hugh Palliser. When the French fleet tacked, did they tack together, or successively one after another?

A. It is out of my power to tell.

Q. At what time did the British fleet tack all together by signal?

A. The general signal was made at ten. I had tacked before, so they did not all tack together.

Q. At what time was the signal made for battle?

A. I saw it a quarter after eleven.

Q. What part of the French line did you begin to engage?

A. I engaged the third ship, but they were not in a line.

Q. Were you at that time accompanied by any other ships of your division so near as to be able to support each other?

A. I was so attentive to my own ship, that I do not recollect any other than the Terrible, about a mile from me.

Q. Was that a mile a-head or a-aftern of you?

A. Aftern.

Q. How near was the ship next a-head to you?

A. I

A. I do not remember any other ship but the French men of war, there being so much smoke.

Q. In that part of the engagement did you receive any damage?

A. We were too much engaged with firing on the enemy to attend to our own damage.

Q. Do you not think the damage you received in that part of the engagement was greater than it would have been, if you had fought with the rest of the Vice-Admiral of the Blue's division?

A. No.

Q. If you had engaged, in company with other ships, would not they have shared in the fire from the enemy; which was wholly levelled at you when alone?

A. That is as the enemy pleased. They might fire at me alone, or they might not have fired at me at all.

Q. From the place where you began to engage, did you proceed till you had joined some other part of the British fleet, and was that your own or the Admiral's division?

A. I did proceed, and joined the Admiral's division.

Q. Did you pass a-head of the Admiral of your own division?

A. No.

Q. Did you pass a-stern of him?

A. I did not.

Q. In what situation was the Vice-Admiral of the Blue when you joined the Admiral?

A. He was a-stern on the lee-quarter.

Q. Was he in that situation from you when you first began to engage?

A. No.

Q. How then?

O

A. Upon



A. Upon the lee-beam, about three miles and a half or four miles.

Q. When you joined the Admiral's own division, did you continue to engage there ?

A. I did.

Q. Did the confusion which that part of the fleet was in, occasion some of our own ships to fire into your ship ?

A. I saw no confusion at all.

Q. Was you fired into by any of our own ships ?

A. I was.

Q. By what ships ?

A. The Thunderer.

Q. What damage did you receive by her shot ?

A. The sheet-anchor was broke ; two cutters were shot through ; some other shot in the ship's sides, but no men were either killed or wounded.

Q. Was not your mainmast shot on the larboard side ?

A. Not that I recollect.

Q. Was it not understood at the time that a man was killed on the quarter-deck by the Thunderer ?

A. No ; it was proved he was killed by the French three-decked ship that lay along side of me. Give me leave to explain why I came along the Thunderer. It was no fault of Capt. Walsingham.

[The Court was perfectly satisfied it was not, and did not desire to hear the reason, since such a circumstance is so common in large fleets.]

Q. Did any other of our own ships fire over you, or into you, on that day ?

A. No.

Q. While the Thunderer and you lay in that position, did not the enemy's shot go over both, or hit both ?

A. I cannot say that.

Q. Were

Q. Were they within distance for the shot to reach or go over both.

A. I was within pistol-shot.

Q. Was you at this time a-head or a-stern of the Victory?

Q. Did you proceed in the situation you were in, till you passed the rear of the enemy's fleet?

A. I did.

Q. How far was the British fleet extended from van to rear, at the beginning of the engagement?

A. I do not know.

Q. Was not the Victory, while she was in action, supported by the whole of the Admiral's own division, and by part of the Vice of the Blue's?

A. I cannot tell that. There were many ships engaged.

Q. Can you tell who supported the Formidable when she was engaged?

A. I cannot particularize. There were three ships a-stern engaged, among which the Vice of the Blue was one.

Q. After the Admiral, with the ships of his division, and the others with him, had passed the rear of the enemy, did he wear and stand towards them?

A. He did.

Q. At what distance from the sternmost ship of the enemy did he wear?

A. I cannot ascertain the distance, it was not far.

Q. How long was it after he had passed the rear-most ship?

A. That I do not know neither.

Q. Did you continue to stand beyond them longer than the Admiral, or the same time?

Q 2

A. I

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A. I continued on the starbord tack till six o'clock in the afternoon, having four feet water in the hold, which obliged me to do so.

Q. From the very brisk fires kept up by our ships that were engaged, do you think that the French ships were not damaged at least as much as ours?

A. I can answer for no ship's firing but my own; neither can I say what damage the enemy received.

Q. Do you not think the damage on their side was in proportion to our's?

A. That I cannot say. I have reason to suppose there must have been damage.

Q. After you ceased firing, did you take notice of the Vice-Admiral of the Blue, and your own division?

A. Not till six o'clock the same evening.

Q. Did you see the Victory when she wore?

A. I have already said I did not see the Victory wear.

Q. Did you see the Vice-Admiral of the Blue at that time?

A. No.

Q. When was the signal for battle hauled down?

A. I cannot immediately say.

Q. Can you say whether it was before or after the Admiral wore?

A. I cannot.

A. Did you not see the Admiral unbend his maintop-sail?

Admiral Keppel. That has been admitted again and again; if the accuser will state at what time he alluded to, I will agree or not agree to it.

Sir Hugh Palliser. When standing a second time to the enemy?

Admiral Keppel. I did unbend it.

Q. Where

Q. Where was the Vice of the Red, and his division, about that time, while the Victory was standing towards the enemy ?

A. I was so attentive repairing my own damages, that I cannot immediately say.

Q. Did you see the Victory wear the second time ?

A. By the same rule, I did not.

Q. When did you first see him in with his head to the southward ?

A. Between four and five o'clock.

Q. Was there a number of ships about him at that time ?

A. There was.

Q. Did you take notice when the French broke up their lines ?

A. I did not perceive them in any line, as I have said before.

Q. Did you observe them to be in a crowd different from what they had been during the action ?

A. I did not see them in a crowd at any time, before, during, or after the action.

Q. Did you observe when they began to form a line of battle with their heads to the southward ?

A. I did not.

Q. Was the Vice of the Blue, and part of his division, the ships that last came out of the action ?

A. I cannot tell.

Admiral Keppel. I do admit it; he must be the last that came out of the action, from his situation in it.

Q. When the Victory wore the second time, did she stand to the southward ?

A. I did not see the Victory wear a second time, but between four and five o'clock she was standing towards the southward.

Q. Was the French fleet then a-stern ?

A. No,



A. No, they were not.

Q. Where were they?

A. They appeared to me, the greatest part of them at least, a-breast of the Admiral, to leeward.

Q. At what time are you speaking of?

A. About six o'clock in the afternoon.

Q. Did you observe what sail the Victory had during the afternoon?

A. I was in such position as not to be able to judge.

Q. Did you see the blue flag at the mizen-head hoisted that afternoon, for Sir Hugh Palliser's division to come down into his wake?

A. I did.

Q. About what time?

A. About five o'clock in the afternoon; I cannot be particular.

Q. Was your ship then to leeward of the enemy?

A. A head, and to leeward withall.

Q. At the time you mention that you saw the French fleet at six o'clock, were they forming in a line of battle?

A. They appeared to me to be forming.

Q. Did the Vice-Admiral of the Red bear down into the Admiral's wake that afternoon?

A. I did not see him bear down. He appeared to me to be a-head of the Admiral's.

Q. Before that happened, did you take notice of his being a-stern of the Admiral?

A. I did not.

Q. What time that afternoon did you get to windward of the Victory?

A. I tacked at six o'clock at nearest, and was to windward of the Admiral a little before seven.

Q. Did you observe that afternoon a number of ships pennants out to bear down, and your's among the rest, on board the Victory and Formidable?

A. I

A. I did.

Q. Where was your ship at that time, with respect to the Formidable?

A. To windward.

Q. At what time was that?

A. Near seven o'clock.

Q. Did you observe the Fox frigate come to the Formidable?

A. I did not.

Q. After you had made sail in consequence of that signal, and your pennant being hauled in, did you again bring to?

A. I did, for we had much water in the hold at that time, going too fast for the people overboard to stop the leak.

Q. Did you observe any signal made in the night by the French fleet, or were you informed of it at the time?

A. I saw some rockets thrown, which I apprehended were signals for some of the French ships.

Q. Did you perceive them from that time to go away?

A. No, I did not.

Q. Were they, or part of them, in sight the next morning?

A. I saw three sail between three and four o'clock in the morning of the 28th.

Q. Was there any more seen from your ship's mast-head, supposed to be French ships?

A. I neither was informed or did see any more than the three sail.

Q. What did you judge those sail to be, line of battle ships or frigates?

A. I judged two to be line of battle ships and one frigate, but in that I may be mistaken.

Q. How

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Q. How far do you think those ships were from the British fleet ?

A. They might be six miles.

Q. Do you speak of them all, or the farthest of them ?

A. The nearest of them.

Q. Do you mean at day-light when you first saw them ?

A. I do.

Q. What latitude was your ship in at noon of the 28th by reckoning ?

A. That the log-book and journal will ascertain.

Q. What was your distance from Ushant that day ?

A. I do not know by the same rule.

Q. What kind of weather was it that morning ?

A. As near as I can recollect it was hazy.

Q. As to wind ?

A. It blew fresh.

Cross Examination by Admiral Keppel.

Admiral Keppel. At the time the signal was made for the Egmont, and other ships of the Vice of the Blue's division, to chace to windward in the morning of the 27th, can you recollect what sail the Vice-Admiral of the Blue was under ?

A. As near as I can, the topsails, and foresails, and the fore-topmast stay-sail. The position the Egmont was in, being a-head, I cannot recollect seeing whether she had her mainsail, her main-topmast stay-sail or not.

Q. As an officer of experience, when a signal is made for your ship, or any ship, to chace to windward, does it direct you to stand on the same tack you set out from five hours, or to tack, and lay up to windward in the wind's eye ?

A. No, it does not, but to lye to windward.

Q. I

Q. I think you said you did tack before the general tack. I ask you whether, if the other ships had tacked, as soon as you, they would not have come to action as soon, and given you succour; and whether their standing much longer time the same tack, if they were scattered and extended, were not the cause of their being so; or was it the fault of the signal to chace to windward?

A. There is no doubt but, had the ships tacked as I did, they might have been in action as soon as the Egmont. It was not the fault of the signal to chace to windward.

Q. Then, if they had got into action as soon, or nearly as soon, and had bore down and closed with the centre division as the Egmont did, whether that would not have given strength to the centre division, and to the division astern of it?

A. Undoubtedly it must.

Q. The situation that the Egmont was in, while engaged, joined with the centre division, did not that give strength to the Vice-Admiral of the Blue, and the two others who were engaged a-stern of him?

A. It did.

Q. Some stress has been laid on the Thunderer's firing into, over, or at the Egmont. I ask you whether, in so large a number of ships following one another, that will not happen in all engagements, in some degree, when ships are so engaged, and so obscured from one another by smoke.

A. It often happens in great fleets unavoidably.

Q. You say you stood upon the starboard tack till six o'clock in the afternoon repairing damage, and that you saw the Victory on the same tack between four and five. Did you see the Victory leading, at that time, two or three points from the wind down upon the ships to leeward?

P

A. I



A. I did observe it, and judged it was to succour the British ships laying a-head and to leeward of the British fleet.

Q. Was the Victory's standing two or three points from the wind, nearing or going from the enemy's fleet?

A. It was nearing the enemy's fleet, and they appeared to me to edge away also.

Q. Can you say what other of the British ships, between four and five, were to leeward, on the lee-bow of the Victory, about the Egmont, in the same condition with himself?

A. There were four sail beside the Egmont to leeward.

Q. When you joined the Vice-Admiral of the Blue, about seven o'clock, did you then see the signal on board the Victory for the line of battle a-head, and the blue flag under it? \*

[\*In bearing down to the Victory.]

A. I did.

Q. Had you ever seen it before in the course of the afternoon?

A. I had.

Q. When you was to windward, at seven o'clock, of the Vice-Admiral of the Blue, did you see him with the same signals out as the Victory?

A. I only saw the signal for bearing to the Vice-Admiral's wake with my signal.

Q. I would ask you, whether in the condition your ship was in after the action, and in the morning of the 28th, you was fit to chace like a man of war, and to entangle yourself on a lee shore, on an enemy's coast, without being in imminent danger?

A. She was not in a condition to chace, much less to be entangled on a lee shore, on an enemy's coast.

Admiral

Admiral Montagu. You will please to acquaint the Court of the defects of the Egmont after the engagement, with respect to her masts, yards, sails, rigging, and hull.

A. I must beg leave to refer you to the defects given in to the Commander in Chief the morning after the action.

Admiral Keppel. One of the assistants is here, and can produce that.

Captain Allen. They are really too numerous for the Court to attend to.

Admiral Montagu. We only wish to hear the principal defects.

A. We received six shot between the lower part of the wale on the starboard side, and five streaks below that; the head of the main-mast had two or three shot through it; the mizen-mast shot totally away; the head of the mizen-mast had two shot; the crotch and mizen-top-sail yard, the main-yard, and the starboard yard-arm shot through; one shot through the flings of the main-yard, one shot through the larboard, and the most of the larboard and yard-arm shattered. The head of the fore-top-sail shortened, the fore-yard shot through in two places, the fore-mast and main-top-sail yard shot through, one shot through the center of the fore-mast, the head of the fore-mast much shattered, and the main-stays.

The Court are satisfied with these defects that your ship was disabled.

Q. What time was it (how many hours after) before your ship was in a condition to renew the engagement; if the Admiral had thought proper so to do?

A. Three hours and an half

Q. Then, Sir, was it not more proper, and prudent, in the Admiral, to lay to and repair his disabled ships before

*Capt. Allen.]*

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before he renewed the attack; than to have returned to the engagement immediately?

A. Assuredly it was.

Q. Then, Sir, upon the whole, did it appear to you, as an old experienced officer, that Admiral Keppel did, by his conduct either on the 27th or 28th of July tarnish the honour of the British navy?

A. No, and I should not take upon me to say thus much if I had not been forty years at sea, and three and thirty years an officer. I look upon it the Admiral did much honour to, instead of tarnishing the British navy.

[Adjourned to Monday.]

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*January 18.*

Admiral Roddam being indisposed, the Court continued their adjournment to the 19th.

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*January 19.*

Mr. CAUSEY, Master's Mate of the *Arethusa*, was called in and sworn.

He was asked whether he had the ship's log-book. He replied in the affirmative.

Questions by Sir Hugh Palliser. Have you the minute book of signals?

A. No. I have a copy of the book.

Q. When did you take that copy.

A. The Evening of the 27th.

Q. Did you enter the minutes of the 27th and 28th of July?

A. No. I did not.

Q. Was there a minute book kept of signals?

A. There was.

Q. Did you take a copy of them daily?

A. Yes.

Q. Did

Q. Did you usually enter them from the minute to the log-book, except on those two days?

A. I did.

Q. What were your reasons for not entering them on those two days as usual?

A. The reason was, the book had not room in it, and it took up too much time, and we were in so much hurry and confusion.

Q. Was there not room on the other leaves?

A. Yes, but as Capt. Marshall meant to keep them himself, I had no occasion.

Q. Then you thought in some sense that you was forbid?

A. No. I did not understand I was forbid.

Q. Where is the original minute book of that day?

A. It was lost. The original was taken in pencil. The paper produced was copied from it.

Q. In whose care was that book generally kept?

A. It remained in the binacle drawer on the quarter deck.

Q. How long after the 27th was it the minute book was lost?

A. Eight or ten days I believe.

Q. Where is the first copy you took in the evening?

A. His is the first copy.

Q. Have you had it in your custody ever since?

A. No.

Q. What did you do with it?

A. When the book was missed, Capt. Marshall applied to me, and I delivered it to him.

Q. Have you examined it since to see if there has been any alterations?

A. I think it is the same; I have a copy of it that was taken afterwards.

Q. Have you yourself ever made any alterations in it since the first time of taking?

A. I



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A. I have not.

He then read over the signals and the time they were given, which as we have given them before, we refer our readers to Captain Marshall's, or Mr. Graham's evidence.

Ordered to withdraw.

Capt. ROBINSON of the Worcester called in and sworn.—Questioned by Sir Hugh Palliser. First begged he might have leave to refer to his minutes.

Q. By Admiral Montagu. When were those minutes made?

A. They are a diary of proceedings of the ship.

Q. When was the French fleet first seen?

A. Thursday the 23d of July, about one o'clock; I cannot be certain.

Q. Did they at that time, and in the evening appear to you to be forming a line of battle?

A. There was an appearance of it; I cannot be certain.

Q. On what tack was the French fleet that evening?

A. I believe on the starboard, standing to the southward.

Q. Was that towards the British fleet or from it?

A. Rather towards us.

Q. Were they at that time to leeward?

A. They were.

Q. How was the wind then?

A. Westerly, or W. N. W.

Q. As you described the French fleet to leeward, and the wind W. standing to the southward, were the French fleet then between the British fleet and the port of Brest?

A. Most certainly.

Q. Where were they the next morning?

A. In the N. W.

Q. Was

Q. Was not the British fleet then between them and the port of Brest?

A. Certainly.

Q. What do you apprehend to be the cause of the French fleet getting to the N. W. and placing the British fleet between them and Brest?

A. I apprehend, Sir, it was owing to the wind shifting, as well as the fleet laying to.

Q. Do you apprehend the French carried sail in the night for that purpose?

A. I don't know.

Q. When they were in the N. W. the next morning, had they not got the weather-gage of the English fleet?

A. They had.

Q. What time in the morning of the 27th of July, did you first see the French fleet?

A. I did not myself see them until five o'clock.

Q. Did they appear to you to be in a line of battle any time in the morning of the 27th of July?

A. They did in a straggling manner, but not in a close line.

Q. At what time do you speak of?

A. About five o'clock.

Q. After that early time in the morning, did their line appear more perfect and more closed?

A. I did not observe immediately after; for I was engaged in making sail.

Q. In the morning of the 27th was the British fleet scattered and dispersed?

A. They were not in a line of battle, but in the usual state of sailing.

Q. by Admiral Sir Thomas Pye. What was the occasion of your making sail in the morning?

A. The Worcester's signal was made from on board the Admiral, the same as many others to chace to windward?

Q. What

Q. What did you judge at that time was the Admiral's intention for making that signal?

A. My judgment was, as every effort had been made from the first seeing the French fleet to bring them to action, the intent of chacing was, if possible, to bring them to action.

Q. by Sir H. Palliser. How many signals of the Vice of the Blue's division was made at that time?

A. I believe about that time there were six.

Q. Did that signal leave the Vice of the Blue with more than four?

A. No.

Q. Did not the signal cause that part of the fleet to be more scattered than it was before?

Admiral Keppel. It does not strike me, the witnesses ever said they were scattered or separated.

Question again.

A. It certainly extended the distance between the centre and chacing ships.

Q. Did it not separate them from their own flags?

A. It certainly did.

Q. Did the British fleet tack altogether by signal, and at what hour?

A. At ten o'clock, or very near it, the Admiral made the general signal for all to tack together, and the chacing ships complied with that signal as soon after as possible.

Q. Before the signal was made for ships to chace, was the Vice-Admiral of the Blue and his division a-head of the Admiral, and something under his lee-bow, or what was his situation?

A. The Vice-Admiral and his division was a-head of the Commander in Chief, but a little on his lee-bow.

Q. Were not the ships that chaced in different situations, some a-head, some a-stern, some to windward,

ward, and some to leeward, at the time the signal was made for them to chace ?

A. I only answer for the situation of the Worcester.

Q. When ships chace from different situations as before supposed, and who differ in their rate of sailing, can they come one and all at the same time in a proper position for tacking ?

A. No.

Q. Was it not the Admiral's practice to make a signal for ships chacing to tack, when he judged they ought to do so ?

A. Certainly.

Q. Did he make any such signal that morning to the chacing ?

A. Not that I observed.

The Admiral admitted he did not.

Q. Were not four of the ships that were sent out to chace the whole of the Vice of the Blue that was stationed in the line of battle between the Vice-Admiral and the Admirals of our division.

A. I have not yet named any ships that chaced.

Q. Were not the Elizabeth, the Defiance, the Robuste and the Worcester the ships ?

A. Yes, they were.

Q. Did not that leave a wide space between the Formidable and the Admiral's own division ?

A. It certainly extended the distance to what it was before.

Q. As you was in chace at that time, could you see the distance the Vice-Admiral was from the Admiral at that time ?

A. It was impossible to ascertain.

Q. If those four ships had been permitted to take their station instead of chacing, would not the two divisions (the center and Vice of the Blue) of the

Q

fleet



fleet been more connected than they were after those ships were sent a chacing and separated?

A. Undoubtedly.

Q. Don't you think that ships proceeding along an enemy's line singly are exposed to more or less damage from the enemy than if a number of ships closely connected so as to support each other?

A. Undoubtedly. Supposing the enemy's line to be compact and close.

Q. Did not the chacing ships, as far as you know, come into action separate and at considerable distance from each other?

A. The four ships that chaced together came into action separately, and at some distance from each other.

Q. Was any ship near to you, so as for you to support each other.

A. At what time do you allude to? I was two hours in action, consequently nearer to one ship than the other at times.

Q. Did part of the ships that chaced go a-head and join the centre division?

A. I do not know.

Q. If the six ships had not been taken from the Vice-Admiral of the Blue and sent to chace, might not the Vice of the Blue and his whole division have gone into action in a collective body and have supported each other?

A. I think so.

Q. by Capt. Duncan. Do you think if the Admiral had made a signal to form in a regular line, and chacing in that regular line, he could have brought the French fleet so soon to action?

A. No, by no means.

Q. by Sir H. Palliser. Was it the van, or the ships of the rear that began the engagement?

A. About

A. About eleven o'clock I observed the van of the British engaging with the enemy.

Q. You say at different times you was in different situations, I would ask if at any time of the action, whether those four chasing ships was so situated, as to be of support to each other?

A. No ships that I could see, could vere near enough to support each other I think.

Q. Were there not six ships in all that chased?

A. Four, I said before, I was sure of—I believe there were two more, but I am not certain of them.

Q. Do you believe, Sir, that the damage you received in the engagement is probably greater than it could have been, if you had engaged in a body in your own division?

A. It depends greatly on the situation of the enemy, and the number of ships engaged with.

Q. by Capt. Duncan. Was the enemy's line a close one?

A. No, far from it, they were much scattered.

Q. How far do you think the British fleet were from van to rear at the beginning of the engagement?

A. It is difficult to ascertain distances at sea, but it appeared to me that the distance from van to rear of those in battle might be full three leagues.

Q. By Captain Boteler. You say the French fleet was much scattered. Were they much extended?

A. I was too busy to observe.

Q. What part of the French fleet did you begin to engage?

A. I received the fire of the headmost two ships of the French van about ten minutes after twelve o'clock. I had a very good observation just before I began.

Q. Which part of them did you first engage with?

*Capt. Robinson.]* ( 120 )

A. The third ship of the French flag being close to me.

Q. Did the enemy's fleet a-head of you bear down seemingly with an intent to cut you off?

A. Some of them bore down, but I cannot tell their motives, I imagined it was to engage one close, which they did.

Q. Did any bear down a-stern of you to rake you as they passed?

A. Several did bear down as I have observed before, but one particularly bore down before the wind, came, I believe between pistol shot, under her topsails, then starboarded her helm, let fall her fore-sail, stood under the Worcester's stern and raked her fore and aft.

Q. What distance was the nearest of our ships at that time?

A. The Formidable was not a mile from me, but I don't know what ships were near me.

Q. Did you observe the Formidable when she went into action?

A. At intervals when the smoke was away I saw the Formidable, but did not observe her first engage.

Q. In the course of the engagement what ships remained a-stern of the Formidable?

A. As the engagement continued full two hours, I cannot say what time, I did not come in until twelve. I fired my last broadside about two. Therefore mention what what time you mean.

Q. From the first time you saw them, was they at wide distances or close?

A. At first there was four sail a-stern, at wide distances.

Q. Did you see the Formidable go with her mizen top-sails aback to let those ships close with her the whole time she was engaged?

A. I

A. I did not see the mizen top-sail aback, but I found the Worcester came up faster than she did before.

Q. What time did you pass the sternmost ships of the enemy?

A. About five minutes past two o'clock in the afternoon.

Q. When the Admiral with the van and center divisions, and the ships with them had passed the rear of the enemy, did they immediately wear and tack, and double upon the enemy in order to renew the action?

A. I did not see them wear and tack. I saw the Red making sail to windward, standing to the northward as I thought towards the enemy.

Q. By the President. Do you imagine the action would have been brought on that day if the Admiral had waited for the British fleet to come more close together?

A. No, I do not think it could, for the French used every effort against coming to an action at all that morning, for they edged away as they had done before from the 24th. I do not think had the wind not shifted they would have availed themselves of it as they had done before.

Q. Did the Admiral with the ships that had passed the rear of the French line keep so near to the enemy after he had passed, as to be able to renew the engagement when the Vice of the Blue came out of it, or to countenance and support him the time he continued engaged with the few ships with him?

A. I did not see the Commander in Chief immediately, for they had done engaging a considerable time before me; I observed when the Worcester came out of action, that the signal for battle was hauled down, and the Vice-Admiral, Sir Robert Harland, with



with part of his division, were to windward, had shortened sail and brought to, with the main topsail to the mast, but I cannot be positive.

Q. At the time the French raked you, what tack was they upon?

A. I observed before she bore down before the wind she gave me a broad side, put his helm a starboard, laid his head to the northward, and then edged away a little and raked me fore and aft.

Q. by Sir Hugh Palliser. When you first took notice of the Admiral when he came out of action, and had observed the signal for battle was hauled down, how far to your recollection and judgment was the Admiral from the Worcester?

A. As soon as the action was over, I brought to as soon as I could get my fore-sails up, the buntings were all gone—but I cannot be certain to the distance.

Q. When you came out of action, did you observe the Formidable's motions.

A. I did. The first time I saw her, I thought she was laying to, soon after I observed her wear and lay her head towards the enemy, that is to the northward.

Q. What distance do you judge she was then from the most of the enemy?

A. I cannot tell.

Q. Whilst she was wearing, did you observe the sternmost of the French ships fire her stern chace at her?

A. Do you mean the first time we wore.

Q. Yes.

A. Then I did not.

Q. If the Admiral and body of the British fleet had wore the same distance from the enemy as the Formidable did wear, might not the French have been immediately

diately re-attacked by that part of Sir Robert Harland's division, which you have described to be then to windward ?

A. As Sir Robert Harland's division, or part of them were to windward, had he had sufficient ships to engage, he certainly might have renewed the attack ; but as I did not see Admiral Keppel, I cannot say any thing about him.

Q. Had the Admiral wore as near as the Formidable did, would they not then have been able to renew the attack ?

A. Consequently, if the Commander in Chief had been in the same situation as the Formidable, and his ships in condition for action, he might have renewed it ; this I give as matter of opinion and conjecture only.

Q. From the very brisk fire that was kept up by our ships that day, have you any reason to suppose that the French ships were not damaged in proportion to the English.

A. I imagine they did, one ship in particular I saw put away before the wind, and a frigate to attend her.

Q. by Admiral Montagu. As you passed from the van of the French to the rear when you came out of action, did it appear to you they had suffered so much in their masts, yards, rigging, and sails as the English had ?

A. As I could not at that time form any judgment of the whole of the British fleet, I cannot make a comparison in general, but I observed that the French fleet had sustained much damage, as most of them had been in action before they passed me.

Q. Except the ship that bore away with her main yard gone, and the frigate to attend her, did you observe

serve any other French ship that had lost her mast or yard?

A. No.

Q. by Sir Hugh Palliser. Was there any appearance of any other ship either English or French being totally disabled by the loss of their masts or yards?

A. I declare I cannot recollect either one or the other with jury masts.

Q. When the Formidable wore with her head to the enemy, did you do so?

A. I did.

Q. Whilst the Formidable and your ship was laying with their heads towards the enemy, did you observe any of the French ships make sail towards them?

A. Yes, several.

Q. Was that the reason of your wearing again and standing towards the body of the fleet?

A. It was.

Q. Did the Formidable do the same about the same time?

A. There was but very little time between the Formidable and Worcester's wearing to stand to the southward.

Q. After you had wore and stood towards the Admiral, did he appear to be alone, or the body of the fleet about him?

A. There were several ships that passed me before the Admiral came up; I think so; I brought to directly to repair my rigging.

Q. by the President. Was the Worcester in condition to renew the action after she wore the first time?

A. No, by no means.

Court. Please to relate the chief of your ship's damage.

A. My main top-mast more than two-thirds through about six feet above the cap, several shot through and through

through the fore-mast and bowsprit, one particularly through the bowsprit just within the gammoning by a forty-two pounder, the mizen yard in many places, a great many shot through her sides and stern frames, most of my standing and running rigging damaged. All my sails damaged, particularly the main top-sail, stays and back stays damaged; in short the whole standing and running rigging, tack and sheet, brace and bowline. The fore-mast whenever opened will be found to have several shot in, which we dared not extract.

Q. by Admiral Montagu. Then, Sir, in the condition you have represented the Worcester to be in after the action, supposing the Admiral had wore, could you have been in a proper condition to support him, supposing he had thought proper to renew the engagement?

A. Not immediately by no means:

Q. How long first?

A. We were upwards of three hours and a half before we edged down, in our station of line a-battle, consequently could not have been ready before.

Q. by Sir Hugh Palliser. Did you observe the Admiral wear a second time, and stand to the southward?

A. I cannot be certain to time, but about four o'clock the Admiral was standing towards the enemy, for the signal for the line a-head.

Q. Did you observe the Formidable and Victory meet?

A. I did not.

Q. When the Formidable and Worcester wore a second time, and laid their heads to the Victory, did you observe the French ships you mention making sail towards them, then edge away, and endeavour to form a new line of battle, being somewhat to leeward of the British fleet?

R

A. I



A. I saw them edge away, and thought they intended to form a new line to leeward.

Q. When the Worcester wore, what position was the body of the French fleet in?

A. As near as I can guess, it was a-stern of the Worcester, and to leeward withal, formed into a line of battle, with their heads to the southward, and their starboard tacks on board.

Q. In case you had come along side of another French ship, which had received as much damage as yourself, was your loss of men so great, or the number of your guns so much disabled, that you could not engage such ships?

A. If he had been complaisant enough to have lain along side of me, I would have engaged him as long as I had a barrel of powder on board, as I had no guns dismounted.

Q. Was you that afternoon in the Admiral's wake, or nearly so?

A. I was a-stern of the Admiral, and to leeward, and got into my station in the line about six o'clock.

Q. What situation was you in on the morning of the 28th, with respect to the Victory at day-light?

A. I was pretty well in my station in the Vice-Admiral of the Blue's division; the Victory was a-head, and to windward withal.

Q. Did you see any of the French ships that morning?

A. I saw three large ships, which I took to be French, on the lee-beam, or rather abaft it; one of them about a mile and half from the Worcester; the other two were about three or four miles, according to the best of my judgment.

Q. Were they apparently to you nearer to any other part of the British fleet than they were to the Worcester?

A. I

A. I believe there were two ships a-stern, and to leeward of the Worcester, that were nearer to them.

Q. Were those three ships chased?

A. I did not see them.

Q. Was the rest of the fleet seen that morning?

A. Not from the Worcester.

Q. Were the signal for seeing them made by any other ships in the fleet?

A. I did not observe, or see any signals made, but I observed on board the Victory two or three ships signals, which I apprehended was for ships to chase, but I did not see the chasing flag.

Q. Was you acquainted by your officer, that some signal had been made that the French fleet was seen to the S. E.

A. Of none but the three ships, I have mentioned; I did not hear or see of the body of the French fleet being seen.

Q. Did those three ships croud sail from us, and which way did they stand?

A. In the dawn of the day they had much the same sail set that we had, and kept the same course. As soon as it became to be clear day, and they found us to be the British fleet, they bore away with all the sail they could croud to the S. E.

Q. If the British fleet had chased those three ships, and suppose the French fleet to be in the direction they steered, was there not a probability of our undamaged ships coming up with their disabled ships, and in that case might we not have taken them; or if the rest of the French fleet staid to support them, might not another engagement have been brought on?

A. Some of our undamaged ships might possibly have chased the three ships in sight, but as I did not see the body of the fleet, I can be no judge of their situation, nor what they would have, it depended

wholly on the distance we were then from Ushant or Brest, the part the three ships seemed to steer for.

Question by Admiral Montagu. You say the body of the French fleet was not seen from the head of the Worcester? then if Admiral Keppel had ordered the undamaged ships to chase those three ships, might they not have been led into the mouth of the enemy before the disabled part of our fleet could have come to their support?

A. It depended wholly on the distance the body of the French fleet was from the chasing ships, and likewise whether our ships sailed better than theirs.

Question by Admiral Buckle. When did you last lose sight of the French fleet in the night of the 27th?

A. I saw them at eight o'clock at night, about two miles to leeward of the British fleet, and about ten o'clock, the master and four lieutenants that were upon deck, came and informed me, that they saw several rockets fired up in the air from the French fleet; afterwards we saw nothing of their lights.

Q. On the 28th in the morning, how was the wind, when you discovered the three ships?

A. About W. N. W. with fresh gales and hazy weather.

Q. Was then the Worcester, under your command, in condition to go down upon an enemy's lee-shore, having her ports, perhaps, to leeward, and begin a general engagement?

A. She was in condition to engage, but not to do so upon a lee-shore, or chase by any means whatever.

Question by Sir Hugh Palliser. In case the fleet had chased nearly before the wind on the 28th, could not the Worcester have carried all her sails to have company with them?

A. As the Worcester's main-mast was not injured much, I apprehend before the wind I could carry sail,

fail, having got my main-top-mast fished and secured the night before.

Q. What latitude was the Worcester in at noon, of the 27th?

A. Latitude 48 32 N. Ushant, bore east about 40 leagues; at noon of the 28th, it was 48: 16 N. Ushant, bore that day E. 28 leagues N. 80 degrees.

Q. In the middle of summer, as that was, supposing a chace of 30 leagues, was the chance of having moderate and fair weather, or a gale of wind, the most probable?

A. The wind and weather for that time of the year, was rather extraordinary, it having blown fresh, and was thick and heavy for three or four days together before.

Question by Admiral Montagu. During the course of your service, have you not frequently known heavy and hard gales of wind in summer?

A. Certainly I have, I have been thirty years at sea.

Question by the President. What sort of weather had you for three or four days afterwards?

A. The next day was rather bad, blew fresh, and the weather was heavy; the others I must refer you to the log-book for; on the 29th it was squally with rain; 30th, fresh gales and moderate; 31st, moderate and cloudy, with rain at times.

Question by Sir Hugh Palliser. Being the middle of summer, and short nights, do you imagine we should have been in imminent danger if our fleet had pursued the French fleet until we had seen them into harbour, or made the land off Ushant?

A. That depends upon the certainty of the distance—had I been single and in chasing of the enemy, I should have stood in until I made the land, or judged myself near it; as to a fleet it depended entirely



tirely upon the situation of it—if it was in a good situation, I should not hesitate a moment about it.

Q. Are you acquainted with that part of the French coast?

A. Not so well as to run a risque, without I had a master on board, who is better.

Q. Is Ushant the bottom of a bay, or the extremity of the coast?

A. I apprehend it is an island, and that the extremity of that island detached from the main.

Q. Did the Admiral on the 28th, lay the fleet with their head to the northward, and before they laid their head to the northward, did you observe any ships make signal to set up their rigging?

A. If I had I should likewise.

Admiral Montagu. Upon the whole then, Sir, did it appear to you, as an old and experienced officer, that Admiral Keppel, by his conduct on those two days tarnished the honour of the British flag?

A. No, Sir; I have had the honour of knowing him many years, I always looked upon him as an exceeding good officer; inwardly a good man, and I believe him so still, having no reason to think to the contrary.

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*January 20.*

Capt. ROBINSON of the Worcester was again called to be cross-questioned by Admiral Keppel.

Admiral Keppel. When you first saw the French fleet on the 23d, what force do you think it consisted of?

A. I really cannot tell their force, but I counted forty-four sail.

Q. How was the Vice-Admiral of the Blue situated, with respect to the Admiral of the fleet?

A. I

A. I recollect he was considerably to leeward.

Q. Do you think that any time on the 23d the French could discover what the British fleet consisted of?

A. I really do not know.

Q. Did the Admiral pursue the French fleet in the afternoon of the 23d, carrying a deal of sail?

A. He did.

Q. In the morning of the 27th, how far was the Vice-Admiral of the Blue, and his division, to leeward of the Victory, when the signal was made to chace to windward?

A. I was on the deck before the signal was made, but when I did see her, the Victory could not be less than two miles a-stern, and to windward withal.

Q. Under what sail was the Vice-Admiral of the Blue and his division, when the signal was made to chace to windward?

A. I cannot answer for the rest of the division, but the Worcester was under close reefed top-sail, fore-sail, main-top-mast, stay-sail, and fore-top-mast-stay-sail.

Q. Do you understand, Sir, when a signal is made to chace to windward, that it obliges you to stand on one tack till the Admiral makes a signal for a general attack?

A. I always understood when a signal was made to chace to windward, that the ship so ordered was to stand on that tack till he could plainly see that the Admiral's signal called him in, or to tack when the Admiral thought proper.

Q. Could you not have tacked upon that signal, without the Admiral's making the signal for you to tack?

A. I undoubtedly could have tacked.

Q. Are there not quarter signals for ships to chace upon, when the Admiral would have them to chace upon

upon a quarter between any two points, as between the N. and W.

A. Certainly there is.

President. When your signal is made to chace, do you or do you not think that you are authorised to take advantage of the wind, by tacking without signal?

A. Yes, Sir, when I have an object in view.

Admiral Montagu. When you have not an object in view, do you not think it is your duty to get as much to windward in the wind's eye as you can?

A. I do.

Admiral Keppel. Would you not have tacked before you did without waiting for signal, if you had expected the fleet to close with the enemy so soon?

A. I certainly should have tacked when I found the object of our chasing was answered, which was that of bringing the French fleet to action.

Q. When you saw the English fleet engaging, did you keep your wind, or could you by a very rapfull sail have closed in with your division sooner than you did?

A. I answer, if I had taken any wind I could have weathered more than half the French fleet, the wind having shifted more than two or three points to the westward, and that I was obliged to keep away in order to join my division as soon as I could, but in the mean time the French fleet edged away, and I was afraid they would have cut me off from my division.

Q. Then, Sir, could you imagine it possible for the Admiral to have made a signal that should put you in that situation?

A. Not intentionally, I am clear.

Q. You said yesterday, when you was engaged, the Formidable was a mile from you, and that there were  
four

four sail a-stern of the Formidable. What was the name of the nearest of those four ships?

A. I believe it was the Robuste.

Q. Were there any ships between you and the Formidable at the time you came out of action?

A. There was not.

Q. Can you inform the Court what became of the four ships that you describe to have been a-stern of the Formidable in the beginning of the action?

A. Every one of the ships a-head of the Worcester were engaging the enemy, consequently stood on, and I believe went to leeward and a-head of the Formidable, to the best of my knowledge, when the smoke would permit me to take notice of them.

Q. Was the Formidable's mizen-top-sail a-back at any of those times when those ships passed as you believe?

A. I never saw the Formidable's mizen top-sail a-back.

Q. Did those ships pass to leeward and a-head of the Formidable when in action, in consequence of the Admiral's signal in the morning, to chase to windward?

A. Had the signal not been made to chase to windward, it is possible those ships would have been in a different situation to what they were in at that time.

Q. That does not answer my question; I ask you whether they did not pass to leeward and a-head of the Formidable, in consequence of my signal to chase at five in the morning to windward?

A. It is not possible for me to know their reasons, for they engaged the enemy before the Worcester.

Q. Do you mean, Sir, that they never were so closed as to give succour to the Vice-Admiral of the Blue, and to one another?

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A. I



A. I do not know that ever they were nearer than half a mile of one another; and sometimes more, when we could see them for smoke.

Q. Does sometimes mean the beginning of the action, or what time, since sometimes takes in different periods?

A. In the course of the action I cannot be particular as to time; it was between five minutes past twelve and five minutes past two, the time that I was engaged.

Q. Do you mean that in no time, between those periods, the ships were not closed together nearer than half a mile, so as to be of support to each other?

A. I do not recollect that they were.

Q. Do you recollect that they were not?

A. I do not. I cannot judge of the whole.

Sir Hugh Palliser. I must insist that the prisoner do not ask the questions so often.

Admiral Keppel. I am always under the controul of the Court, but as I never interrupt the prosecutor in his questions, I must claim the privilege of not being interrupted in my cross-examining Capt. Robinson, who has taken a large scope, a period of two hours; that is my reason for asking him.

The witness desired the evidence he had given this day might be read, which was done.

Admiral Keppel. You say, that during the action three ships passed a-head of the Formidable, how do you reconcile that to their never being nearer than half a mile?

A. When they passed a-head of the Formidable, they passed from the situation they were in a-stern, I did not say they passed a-head of the Formidable before.

Here the minutes were read over two or three times to be corrected.

Admiral

Admiral Keppel. If they were a-stern of the Formidable when in action, and not out of action before her, must they not have passed her during the action?

A. I do not know.

Q. You have stated your ship to be very much exposed while in action, which you begun with the third ship of the enemy's van, and carried on along the line. I should be glad to know how many men you had killed and wounded?

A. I had but three men killed and five wounded, but some of the men died of their wounds a few days after.

Q. Was the Victory standing to the enemy on the larboard tack when you first saw her after you came out of action?

A. She was,

Q. Can you inform the Court the precise time when you wore, and stood towards the enemy, when you came out of action?

A. I cannot fix the precise time.

Q. Can you say any time near it?

A. I believe it was near half after two, but cannot be positive.

Q. How long did you stand on the larboard tack, when you did wear, and when you were standing back again to the Admiral. Was it by signal?

A. The moment I wore I brought to. I did not make sail. I was not in a condition to make sail. And when I was to stand back, it was not by signal. I did not see the Admiral.

Q. After you wore back to the Admiral, how near did the Admiral pass to the Worcester?

A. I really do not recollect how near, but it was not far distant.

Q. Was the Admiral then upon the larboard tack?

A. I believe he was.

Q. Did you see the signal at that time flying on board the Admiral for the line of battle a-head?

A. No, not at that time.

Q. Had you no officer appointed to observe the Admiral's signals?

A. I had, but he was wounded early in the action.

Q. When the Formidable passed you, do you recollect where the Formidable was?

A. To the best of my knowledge she was to windward?

Q. Do you say positively, that when you wore the second time after the action, to stand toward the Admiral, several ships passed you a-head of the Victory on the larboard tack?

Sir Hugh Palliser begged the witness might be permitted to refer to his former words, whenever he should find it necessary to do so.

Admiral Keppel. Mr. President, though it is not the practice for witnesses on their examination to have reference to what they said before, I agree to it cheerfully. I have no design to perplex or mislead any witness. I wish only for the discovery of truth; and I hope that candour and plainness will lead me to it.

A. I am positive that some ships passed, what they were I do not know, and that one of the ships to the best of my remembrance hailed the Worcester, and told us to get out of the way, for the Admiral was coming up.

Q. Was that ship and the Worcester at that time to the southward?

A. I do not recollect.

Q. I ask you this question, because the southward is a-stern of the Victory. Now you know of one ship, was that a-head or a-stern of the Victory?

A. I really do not know.

Q. Do

Q. Do you know of any other ship?

A. I was so much engaged in putting my ship to rights, that I could not see.

Q. What time did you see the French fleet forming this line on the starboard tack, standing to the British fleet on the 27th, after the action?

A. I observed some of the French ships standing to the southward, between two and three o'clock—I cannot tell the exact time.

Q. Was it before you stood towards the English Admiral?

A. I do not know.

Q. When you say you got into your own station, and the Admiral's wake, at six o'clock in the evening, do you mean that you was then got into the wake of the Vice-Admiral of the Blue, or of the Commander in Chief?

A. I mean that I was in my station in the Vice-Admiral of the Blue's division; and as near as I could get between the Vengeance and the Elizabeth; but the Vice-Admiral of the Blue was to windward, and the Commander in Chief a-head.

Q. When the Admiral laid his head to the northward on the 28th, did he bring to on the larboard tack?

A. I believe, in the morning of the 28th, the Admiral made the signal to wear, laid their heads to the northward, and brought to; I think so, to the best of my recollection.

Q. Did he not stand before the wind at all, after wearing?

A. I do not recollect certainly. I believe he did make the signal for the line some time.

Q. As you say you are certain that several ships passed you on the larboard tack after the action, and gave, as a reason for that certainty, that one ship hailed



hailed you to get out of the way, for the Admiral was coming up, what do you mean by saying you do not recollect whether that ship was a-head or a-stern of the Admiral?

A. Upon recollection, I think he must have been a-head of the Admiral on the larboard tack.

Q. Do you recollect whether the ship that hailed you was on the larboard or starboard tack?

A. As I have said before, I cannot recollect.

Q. Do you recollect whether it was a two-decked or three-decked ship?

A. I do not.

Admiral Montagu. Do you recollect what answer you gave the ship that hailed you?

A. Perfectly well; they must see my situation, and that it was out of my power to get out of their way.

Q. When you was hailed, did you not naturally look to see where the Admiral was?

A. I did not see the Admiral, but they told me he was a-stern coming up.

President. What happened in consequence of that answer? Did the ship that hailed you pass by you to leeward or to windward, or bring to?

A. To the best of my remembrance, she passed on a-head, but I know not on what quarter.

Q. Did the Admiral pass you?

A. I was so much engaged that I do not recollect. He was then ordered to withdraw.

Mr. SEWELL, Master of the Worcester, was then called and sworn. Before Sir Hugh Palliser begun to question him, the charge was read to him, as he had not been present at the first reading.

Sir Hugh Palliser. Do you remember seeing three ships of the enemy in the morning of the 28th, at day-light?

A. Yes,

A. Yes.

Q. What distance do you recollect they were from the British fleet?

A. The sternmost ship of the three was from the Worcester a mile and a half, as near as I could judge.

Q. Was she nearer to any other tract of the British fleet than to the Worcester?

A. There was a ship a-stern of the Worcester, rather a little on the larboard quarter, that did appear to me to be something nearer than the Worcester was.

Q. Do you remember when the Worcester came out of action, at what distance the Admiral and the body of the fleet was from the rear of the enemy?

A. As near as I can guess they were to the southward of the Worcester at about two miles; this leads towards the enemy, with their larboard tacks on board.

Q. Did you take notice of the Vice-Admiral of the Red and his division at that time?

A. I saw the Vice-Admiral of the Red and some ships, with him to windward of the Admiral and a-head withal.

Q. Were they also on the larboard tack?

A. They were.

*Cross-Examination by Admiral Keppel.*

Q. You have said, that in the morning of the 28th there was another ship on the lee-quarter of the Worcester, and that the nearest of the three French ships were within a mile and an half, did that ship or the Worcester lay their heads towards her, and make a signal to the Admiral that she was so very near, and was an enemy?

A. The

A. The Worcester did not. And I cannot say as to the other ship.

Q. At what time did the Worcester come out of action on the 27th?

A. About two o'clock.

President. Had a signal been thrown out for your ship to chase at the time you are speaking of, in the morning of the 28th, was you in a condition to chase?

A. No.

Admiral Keppel. Did you see the Victory when you came out of action?

A. I did not.

Q. How soon then did you see her afterwards?

A. About three o'clock.

Q. Was she then upon the larboard tack?

A. She was bearing down, and had the signal flying for a line of battle.

He then stated, that he saw some ships a-head of the Admiral, not one of which he could name, nor give any other account of the ship that hailed, but that she was a three-decker. He also said, that the Worcester had wore and tacked at least half an hour after she came out of the action; whereas the Captain swore she was unable to make sail, but merely to lie to.

He was ordered to withdraw.

First LIEUTENANT of the Worcester called.

Judge Advocate. He is so ill, that he cannot attend the Court to day.

Sir Hugh Palliser. I beg the Judge Advocate may read Admiral Keppel's letter to the Lords of the Admiralty, on the 30th of July.

Admiral Keppel. I have no objection.

[The letter was read: the Reader will see it page 5.]

Admiral

Admiral Keppel. I admit the letter to be mine.  
 Sir Hugh Palliser. I beg the Admiral's journal of  
 the 27th and 28th, may be read.

*Copy from the Log-Book of the Victory, of the particular  
 remarks from the beginning of the action to the losing  
 fight of the French fleet.*

July 27, 1778.

AT ten A. M. made the signal and tacked; a large  
 body of the French fleet appeared in great confusion.

At half past eleven, the ships a-head began to en-  
 gage, the French ships having fired at the van of our  
 fleet first. Ditto, made the signal for our fleet to en-  
 gage; we were now on contrary tacks with the French,  
 they striving to fetch as far to windward as they could,  
 firing as they passed our ships; several of them fired at  
 the Victory; but seeing we could fetch the Bretagne,  
 we passed two of their ships; reserved for the Admi-  
 ral's ship.

At three quarters past eleven got along side of the  
 Bretagne, and at noon engaged La Ville de Paris.

At one P. M. engaging the six sail that were astern  
 of the French Admiral.

At half past one made the signal, and wore, our ship  
 greatly damaged in rigging and sails.

At two made the signal for the line of battle a-head  
 at one cable's length distance, and brought to, to re-  
 pair the rigging.

At half past two one of the French ships, who had  
 lost her main yard and mizen top-mast, ran away to  
 leeward, and a frigate to attend her.

At three quarters past two the French wore and  
 formed the line with their heads towards us.

At seven minutes past three, made the signal for the  
 ships to windward to bear down into our wake, and

T

that



that they might see it the more distinctly, we hauled down the signal for the line of battle.

At fifty minutes past three, finding the signal for bearing down into our wake was not seen, we hauled down that, and made the signal for the line again, we now steering S. S. E. to join our ships to leeward and form the line of battle.

At half past four repeated the signal for the ships to bear down into our wake.

At five made the signal for the ships to get into their stations in the line, and sent the Milford to desire Sir Robert Harland to make sail with his division, and form the line in the van, which he did.

The French line formed with 28 sail, and two ships of 50 or 60 guns. Employed in splicing the rigging, which is very much damaged, having lost seven main shrouds, and the major part of the top-masts and running rigging, with all the top-sails, courses and stay-sails very much damaged. At seven made each particular ship's signal of the Vice-Admiral of the Blue's division, except the Formidable, who has not got her fore-top-sails bent, to come into their stations for the line. The French line coming up, they have thrown the ships that received the least damage into their van. The French Admiral has 14 sail of the line a-head, and 13 a-stern of him, with two 50 or 54 gun ships, four frigates, one schooner, and three brigs.

At eight o'clock, three of the French ships nearly abreast of us to leeward—we standing on under double reefed top-sails and fore-sails to give Sir Hugh Palliser and his division more time to get into the line, preparing to renew the engagement at day-light.

At eleven minutes past eleven, one of the head-most ships of the French fired two rockets, and soon after one false fire; and at twelve lost sight of their lights.

At

At four wore ship, and made the Prince George and Bienfaisant signal to those three sail in the S. E. quarter, which were all we could see, and them we took to be French.

At nine we called them in. The fleet all employed in splicing the rigging, and our carpenters employed in fihing the main and mizen-masts that were shot through.

Captain BAZELY of the Formidable sworn.

Question by Sir Hugh Palliser. Did you see the French fleet on the morning of the 27th of July?

A. Yes.

Q. Did they at any time appear to you to be in a line of battle?

A. They did.

Q. Do you remember the situation of the Vice-Admiral of the Blue that morning?

A. The Vice-Admiral of the Blue, and his division, was on the lee-bow of the Victory, and a-head withal. Some part of the Admiral's division was on the weather beam of the Vice-Admiral.

Q. Do you recollect the signal for six ships of the Vice-Admiral of the Blue to chace?

A. Yes.

Q. Did that signal cause those ships to be dispersed from their Admiral, and from each other.

A. It caused them to be extended from their Admiral, but whether separated from each other, I cannot recollect.

Q. In the morning, when the Vice-Admiral with his division, was situated as you have described, were they not in a proper situation, and proper distance, to have readily taken their station, had a signal for a line of battle been made?

A. They appeared so to me, if the signal for forming had been made.

Q. If all the ships of that division had been suffered to remain with their Admiral, might they not have gone into action with him, so as to have supported each other?

A. Yes.

Q. Did the chasing ships, so far as you know, come into action separately, and at distances from each other?

A. They appeared so to me, those that were a-stern.

Q. Did part of them by chasing go a-head of the Formidable, and join the centre division?

A. Yes, two of them.

Q. Did these ships, being taken away from the Vice-Admiral, leave him to go into action equally supported as the other flag officers were?

A. No.

Q. Was any of the ships of the Vice of the Blue's division within gun shot of the Formidable when she began the action, except the Ocean then to leeward of her?

A. I don't recollect any ship a-stern nearer than half a mile.

Q. During the action, was not four ships a-stern of you, at a distance from each other?

A. They appeared so before the action began, how they were after I cannot say.

Q. During the time the Formidable was engaged, passing along the French line, was any ship so near to her as to afford support to each other, except at one time, a ship shot up from under the thick smoke, as to avoid being foul of her, was obliged to run to leeward, and thereby rendered her fire useless?

A. After the Formidable had opened her fire, I observed no ship, except the one the Vice-Admiral alludes to, coming under the lee.

Q. What

Q. What ship was that supposed to be?

A. I cannot say.

Q. What part of the French line did the Formidable begin the close action with?

A. One ship of the French Admiral's centre.

Q. Did the Formidable receive the fire of several of the enemies van, before she began close action, and did not return them?

A. Yes.

Q. Do you think the damages the Formidable received, were not much greater than they probably would have been, if she had fought in a body with the rest of the Vice of the Blue's division?

A. Most undoubtedly.

Q. As you passed along the French line, did they appear to be more irregular than might be reasonably expected, after having been engaged with the van and centre of the British fleet?

A. No.

Q. The four ships you have spoke of a-stern, did not the Formidable back her mizen top-sail, in order to let those ships close?

A. The mizen top-sail was back'd to prevent the Formidable from shooting a-head, to avoid the Ocean's fire, and also for the ships to close up a-stern.

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*January 21.*

Capt. BAZELY's *Evidence continued.*

Q. Did the Formidable begin the engagement with in musquet shot?

A. Yes.

Q. Did she pass within the same distance along the line to every one of the enemy's ships?

A. Nearer to some, farther from others.

Q. You have said some of the Vice of the Blue joined the center division. Then was not the Admiral supported



ported by the whole of his own division, and that part of the Vice of the Blue's ?

A. I said that two of the Vice Admiral of the Blue's passed by, but what number the Admiral was supported by I know not.

Q. In passing along the enemy's line, did it, or did it not, appear to you that several of them were much damaged, they not keeping up so brisk a fire as the rest ?

A. I did not perceive any particular damage their ships had received; but that the centre Admiral and two other ships returned us but very little of their fire.

Q. Did you observe one disabled and run out of the line with a frigate, after we had passed them ?

A. One ship with his main yard quitted the line, attended by another ship.

Q. How long, upon the whole, do you reckon the Formidable was engaged ?

A. I cannot speak to time, I think one hour and forty minutes.

Q. When the Admiral with the van and centre divisions had passed the rear of the enemy, did he immediately wear and double upon the enemy, and continue the engagement ?

A. It is impossible for me to answer when the Admiral did wear.

Q. When the Formidable was so near to the rear of the enemy, was the Admiral and the rest of the fleet so near to the rear of the enemy as to renew the engagement, or to have succoured the Vice Admiral of the Blue, supposing the rear of the enemy, had bore down to cut him off ?

A. No.

Q. When the Formidable ceased firing, do you remember you and myself taking notice that the Admiral.

miral, with the body of the fleet, then with him, were standing towards us, and that I thereby ordered the ship to be wore?

A. I recollect after the Formidable had passed the enemy's rear, that the Vice Admiral of the Blue directed the ship to be wore. I then observed the Victory with some ships standing towards the enemy.

Q. At what distance do you suppose the Admiral and the ships with him at that time from the Formidable?

A. Two miles.

Q. When the Formidable wore, were we then in the stream of the enemy's line, or in the wake of the sternmost ship?

A. In the wake of the sternmost ship, at the distance of random shot.

Q. When the Formidable ceased firing, did not one of the enemy's ships fire her stern chace at her, or hedge away, and bring some of her after guns to bear at her?

A. I recollect, after the helm was a weather, one or two shots were fired at her close under her counter.

Q. Whilst the Formidable lay with her head towards the enemy, were not the officers and men ordered to return to their quarters in expectation of going again into action, when the Admiral came up with the fleet?

A. Yes, immediately after the ship was wore.

Q. After a little while, did you observe three of the enemy's ships making sail directly towards the Formidable?

A. Yes.

Q. At this time was not the Formidable nearer to those three ships than the Victory was to her?

A. The Formidable was nearer to the Victory than the enemy's three ships.

Q. When

Q. When the *Formidable* wore again, did those ships edge away and begin to form a line, pointing to leeward a-head of the British fleet.

A. They did.

Q. Did you see the *Vice of the Red*, and where, when the *Formidable* lay with her head towards the enemy?

A. They were to windward.

Q. If the *Victory*, and the other ships with her had wore as near to the rear of the enemy as the *Formidable* did, after coming out of action, at the same time the *Vice of the Red* having doubled on the enemy, at the same time the *Vice Admiral of the Red* had bore down also; might not the French have been prevented forming a new line, which they were then beginning to do with their heads towards us?

A. If the *Vice of the Red* had bore down so.

Q. If the *Admiral*, with the rest of his division, had advanced, would it not have obstructed the enemy's line?

A. It certainly would have very much obstructed the forming of the French line.

Q. Do you know the state of the *Admiral's* ships that were with him?

A. No.

Q. Do you know the state of the *Vice of the Red's* division?

A. I know the state of no ship but my own.

Q. What was the state of the *Formidable* when she came out of action?

A. I beg to refer to the minutes; all my sails were cut to pieces.

Q. In general was she very much damaged?

A. She was.

Q. Was she capable of going into action again immediately?

A. To

A. To go into action she was, but not to pursue an enemy.

Q. Might not the action have been immediately brought on, when the Vice of the Blue was coming out of the line, and the enemy prevented their forming a new line?

A. I saw nothing to the contrary.

Q. By Admiral Montagu. If the Admiral with the rest of his division had wore as near as the Formidable did, they being on different tacks, would it not have endangered them of running foul of each other.

A. I apprehend not.

Q. By Sir Hugh Palliser. Supposing Sir, the Admiral, with the ships that were with him, had continued to advance towards the enemy with the signal flying, and at the same time the Vice of the Red had bore down to the enemy, do you not conceive that the French in that instance might have been attacked and prevented from forming a new line, which they were then beginning to do with their heads towards the British fleet?

Sir Hugh Palliser. Take notice the prisoner smiles.

Admiral Keppel. Does the court preclude me that? It is my natural countenance.

A. I think I could have prevented them forming so soon as they did.

Question by Admiral Arbuthnot. Can you venture to speak of the state of the Admiral or Vice-Admiral of the Red's ships, or divisions at that time?

A. No, of no ship but my own.

Q. What state was the Formidable in when she came out of action?

A. All the sails that were set were cut to pieces; all the stay-sails, and in short, she was much damaged.

U

Q. Was



*Capt. Bazely.]*

( 150 )

Q. Was she in condition to go immediately into action ?

A. Yes, but not to pursue.

Question by Sir Hugh Palliser. If the Admiral at that time did not think fit to re-attack, except in a line of battle, might he not immediately have formed one, by making a signal for the Vice-Admiral of the Red, and his division, who was then to windward, to take the lead on that tack, in the room of the Vice-Admiral of the Blue, who was just then come out of action ?

A. I saw nothing to the contrary.

Q. Did the enemy, from their motions, shew any disposition towards renewing the engagement ?

A. Not until after they began to form a line to leeward.

Q. Did the British fleet seem to avoid renewing the action ?

A. Yes.

Q. After the Formidable wore a second time, did she and the Victory meet ?

A. They passed each other.

Q. When they passed, did the Victory stand on or wear under the Formidable's stern ?

A. She wore a-stern of the Formidable.

Q. Did she first run to leeward, and afterwards haul her wind.

A. She appeared to me to go from the wind.

Q. Did this leave the Formidable a-stern and to windward withall of her wake ?

A. Yes.

Q. When the Victory had wore, did she haul her wind to the southward ?

A. She appeared to do so to me.

Q. Were not the French fleet then a-stern ?

A. Yes.

Q. Did

Q. Did not the Victory continue to stand the same way the rest of the afternoon ?

A. Yes, until day light next morning.

Q. Do you recollect what sail the Victory carried during the afternoon ?

A. I do not particularly.

Q. Did not the Victory always out-sail the Formidable with the same sail ?

A. Yes.

Q. As the Victory was standing to the southward, did the French stand the same way, pointing something to the leeward of the British fleet ?

A. Yes.

Q. Did the Vice of the Red, and his division bear down into the Admiral's wake that afternoon ?

A. Yes.

Q. Was that his own, or the Vice of the Blue's station on that tack ?

A. On the starboard tack, it was the Vice of the Blue's station.

Q. Do you know whether that was done in consequence of the signal flying, or by particular order of the Commander in Chief ?

A. I don't know.

Q. Did you observe him make sail to get into his station, a-head of the Admiral ?

A. Yes.

Q. From the various motions of the Admiral that afternoon, did you conclude that he had no intention to renew the engagement, until the next morning ?

A. It appeared so to me, and I expressed myself so to the Vice-Admiral, at the time.

Question by the President. At what time did you think so ?

A. At the time the signal for battle was hauled down, and in the middle of the afternoon, when

the Admiral pointed to the southward. I was in too much confusion to tell the time exact; it was when the Admiral sent for me from the fore-castle aft.

[Here an altercation took place, in which Admiral Keppel complained of the evidence not being taken down exactly by the clerk.]

Question by the President. Did you hear the Fox frigate deliver a message to the Vice-Admiral of the Blue?

A. No, I did not.

Q. Did you see the Fox come under the Vice-Admiral's stern?

A. I did not see the Fox until her ship's company cheered the Formidable.

Q. Were you nor informed what brought the Fox there?

A. No, not until after dark.

Question by Sir Hugh Palliser. How far do you reckon the Formidable might be from the Victory within half an hour after the Victory passed to leeward of her?

A. Not more than half a mile.

Q. After the Admiral stood to the southward, as before mentioned, did the Formidable first haul out of the way of other ships to let them take their stations between her and the Victory?

A. Yes.

Q. What was the Formidable's station in the line of battle?

A. The ninth ship from the Victory.

Q. When the Formidable came out of action, did she not stand after the Admiral with all the sail she could, considering the condition she was in?

A. Yes.

Q. Did not the Victory increase her distance all the afternoon?

A. Did

A. Yes.

Q. Did not the Formidable steer the whole afternoon after the Admiral, keeping him a little open under her lee bow?

A. Yes.

Q. Was it not her proper course?

A. Yes.

Q. As soon as the Admiral wore and stood to the southward, were not the officers and all hands on board the Formidable set to work to get the rigging knotted and spliced, and to repair other damages?

A. Yes.

Q. Do you recollect the distribution of the officers?

A. Yes.

Court. I do not think those questions relate to the charge.

Q. Do you remember the Fox coming to the Formidable?

A. I have already answered.

Q. At what distance do you suppose the Victory was from the Formidable when the Fox came down to her?

A. One mile from the Victory's wake, and three miles a-stern withall.

Q. At what time of day was that?

A. Near sun-set.

Q. Was you in a situation to hear the message delivered by the Captain of the Fox?

A. No.

Q. Was not the signal for line a hattle a-head kept flying on board the Formidable until night?

A. Yes.

Q. On the latter part of the day, was the signal for ships to windward to bear down with many ships pennants of my division let fly on board the Formidable before or after the Fox spoke to her?

A. Before



A. Before the Fox cheered the Formidable, I did not hear the Fox speak.

Q. Was not those signals made in consequence of the same being out on board the Victory?

A. Yes.

Q. Were not two of those ships pennants hauled in because they had answered them before the Fox came down?

A. I do not recollect that circumstance.

Q. Did the Fox or Formidable cheer first?

A. The Fox cheered first, and the expression I made use of to the men on the fore-castle was, that is hearty, my lads, now return the cheer.

Q. What were the damages the Formidable received?

A. The fore-mast very much wounded and rotten, fore-top-mast and yard wounded, likewise bowsprit, the gib and fore-top-mast stay sail cut to pieces and went over-board, fore-top-sail cut to pieces, fore-sail and spring stay shot away, all the fore shrouds on star-board side except one shot away, only three remained on the larboard sides, all the fore-top-mast shrouds and back stays except one on the larboard side gone, futtock shrouds and stay, all the braces, bowlings, and running ropes, leading about the fore-mast (very few excepted) those were the chief of the fore-mast, the fore-tacks and sheets shot away.

Q. by Admiral Montagu. Notwithstanding the description you have given of the damages received in the fore-mast and bowsprit with their rigging, did not the Formidable wear twice before she endeavoured to mend her rigging?

A. Yes.

Q. by Sir Hugh Palliser. Do you not conceive, that any ship whilst she has all her masts standing with any canvas in moderate weather, will wear by putting her helm a-weather, although her masts may be in such

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ships

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such a condition, as not to keep company with other ships?

A. Yes, we had that instance in the Formidable.

Q. Whether several of those shrouds that were shot, were not cut in two places?

A. Yes.

Q. by Admiral Arbuthnot. As you made use of yard tackle falls, to brace about the yards, could you not by the same means have braced up the yards short, and thereby carried sail before the wind, and have kept company?

A. Yes.

Q. Relate the other damages.

A. Main-top-mast very much wounded; main-yard and main-top-sail-yard much wounded; main spring-stay shot away; seven shrouds in the starboard, and five of the larboard main-top-mast stay, and spring stay; fore main-top-mast shrouds, and all the back stay, middle stay-sail stay, and top-gallant stay-sail stay; fore-channel, three chain plates shot away; main channel, two mizen-channel one.

Q. by the President. After you passed the French fleet, did they bring to, or make sail?

A. They broke up their line, and appeared to be under sail, not lying to.

Q. Were you then in a condition to have followed them and have renewed the engagement, if the Admiral had thought proper?

A. She was in a state to renew the action, but not to pursue?

Q. by Admiral Montagu. The Vice-Admiral asked you, whether there was not some difference in the account of defects between those delivered in to the Admiral the next day, and those delivered to the Court. I therefore ask how long it was before you discovered those other defects?

A. Immediately

A. Immediately on her arrival at Plymouth.

Q. Were not the officers and men on board the Formidable employed the whole afternoon, and all the next night repairing those damages?

A. Yes.

Q. Did not the Formidable get into her station before day-light next morning?

A. She got into the line, but I cannot say whether it was her proper station.

Q. Did not the drums beat to arms at two o'clock, and all hands to quarters ready, expecting orders to engage at day-light?

A. Yes.

Q. During the afternoon of the 27th, notwithstanding the damages the Formidable received, might she not have borne down upon an enemy, having only two guns disabled, although she was not able during the afternoon to reach her station in the line of battle with the sail the Admiral carried?

A. Certainly; such was the Vice-Admiral's declaration to me that afternoon, but at the particular time I cannot recollect.

Q. During the morning of the 28th did you not see three French ships to leeward?

A. I saw three strange sail which I supposed to be French men of war, a part of the French fleet.

Q. What distance do you judge the nearest was to the British fleet?

A. Not more than a mile from the Formidable.

Q. What number of men on board the Formidable were hurt by an explosion of powder?

A. Reported to me twenty-seven.

Q. Were any of them killed outright?

A. No.

Q. What number of killed and wounded did you report to me after the action?

A. Fourteen

A. Fourteen men killed, one of whom was the boatswain, two since dead of their wounds, and forty-nine wounded, one of whom was the second lieutenant.

Q. Have you made a comparison of the respective number killed and wounded in the different divisions, from the account published by the Admiral?

A. Yes.

Q. What was the number killed in the Admiral's and Vice-Admiral of the Red's division together?

A. I don't recollect.

Q. Was it more or less than the number in the Vice-Admiral of the Blue's only?

A. I think nearly the same.

Q. As to the windward?

A. Nearly the same.

Q. Were the three strange ships chased by any of the British fleet?

A. Not that I observed.

Q. Do you know of any signal being made of seeing more strange ships to leeward?

A. I do not recollect that circumstance.

Q. If the British fleet had pursued those three ships, and supposing the French fleet to have been in the same direction they steered, was there not a probability of some of our undamaged ships coming up with those three ships, or the disabled ships of the French fleet, and have taken them if the French fleet had abandoned them, or if they had staid by them, another engagement might have been brought on?

A. That being a matter of opinion, I beg leave to decline an answer.

Q. by President. How many knots do you imagine a ship might have gone that morning with all her sails?

A. Between seven and nine knots.

Q. Do you know what time the French went off in the night?

X

A. No



A. No.

Q. What distance were you from Ushant that morning, the 28th?

A. Ushant at twelve o'clock at noon, was N. 8 id. E. latitude 48d. 11m. distance by the reckoning of the Formidable, forty-five leagues, but afterwards by making the land off the Lizard, we found we were nearer to it by thirteen leagues.

Q. Being the middle of summer, short nights, and moderate weather, do you apprehend it would have been attended with any imminent danger, if the British fleet had pursued that of France, for the chance of coming up with some of them, at least so far as seeing them into port, or have made the land?

A. It appeared to me to be not dangerous.

Q. If you, Sir, had had an engagement with a single ship at that distance from Ushant, and had beat her to occasion her to run away, do not you think that you ought to pursue her till you had seen her into port, all your lower masts being standing?

A. In a single ship I should not have hesitated a moment.

Sir Hugh Palliser. I have done with Capt. Bazely.

Admiral Montagu. In the course of your evidence, you have said the chasing ships came into action separate, Do you know the cause of their doing so?

A. I must beg my evidence on that question, to be read to me.

Admiral Keppel. I have never yet positively refused a thing of the kind, but now I do; therefore, Mr. President, if that mode is to be allowed to every one, I lose the effect of cross examination: in his evidence, in particular, I do object to it.

Court. We must withdraw. On their return the Judge Advocate, declared as follows:

It

It is agreed that the witness when he comes upon his cross-examination by the prisoner, is not to have recourse to his former evidence.

Sir Hugh Palliser. I beg, as Capt. Bazely will not have the same indulgence, that others have had, that the Court will not pass any thing severe on him on account of the insinuations that have been thrown out of closely examining him.

Capt. Duncan moved to withdraw again,—withdrew.

The Judge Advocate, on his return, expressed himself as follows: the Court retired to deliberate on the propriety of the words of the prosecutor being put down on the minutes, as they seemed to convey an idea, that the Court would not take Capt. Bazely under their protection; they think it reflects on them, and they mean to inform the several witnesses, that they will take all possible care, that no improper questions shall be put to any of them.

Admiral Montagu's question put again.

A. The distance of them appeared to me to be by their chacing in the morning by signal. Whether they could have come into their station of line of battle after chacing, I know not.

Q. You have said that two of the ships chacing went a-head of the Vice-Admiral of the Blue, did they do it by signal from the Commander in Chief?

A. I don't know.

Q. Did the Vice-Admiral of the Blue make their signals to get into their stations, when he saw them go a-head and join the center?

A. No.

Q. Then if the Vice-Admiral of the Blue had made their signals, and they had obeyed it, do you not think his division would have been better supported?

A. I do.

Q. You have said the nearest ship of the Vice-Admiral of the Blue's division to leeward of the Formidable, meaning the Ocean, and that the four ships a stern of the Formidable before the action began was at a distance from each other, and half a mile asunder, and that the damage the Formidable received was greater than if she had fought with the body of the Vice-Admiral of the Blue's division. Do you not think, if the Vice-Admiral of the Blue had made the signal for the four ships a-stern to close the line and come nearer to each other, and likewise nearer to him, agreeable to the seventh Article of Admiral Keppel's Fighting Instructions, they would not have supported him, and have taken off a great deal of the fire of the enemy?

A. In the first place I do not remember the signal.

Court. It is a pennant at the cross jack yard-arm if a-stern; if a-head at the gib boom-end.

A. It appeared to me that if the signal had been made for the four ships a-stern for those ships to have closed the Vice-Admiral, they appeared to me not to have been able to do it sooner than they did, as they had all their sails set (before the action.)

Q. I mean while in the action?

A. After the Formidable began the action I can answer to nothing relative to those ships a-stern.

Q. Was the van of the Vice-Admiral of the Blue's division a-head of him, to support him during the action?

A. I don't apprehend the question with respect to the van, as the fleet were not in a line.

Q. Were any of the Vice-Admiral of the Blue's division that should have been a-head of him in their place?

A. I

A. I can answer only to two ships that passed the Formidable before the action, afterwards the smoke hindered my sight.

Q. What ship did you follow into action?

A. I don't know.

Q. How far was the nearest ship a-head of you when you came into action?

A. A good half mile.

Q. Do you know whether she was one of your division?

A. No.

Q. Did you on the 27th of July see any action of Admiral Keppel that indicated flight, or did you see the French fleet pursue us and offer us battle?

A. The British fleet stood upon the starboard tack forming a line, the enemy were a-stern forming a line, whether that has the appearance of a flight, I beg leave to refer to the opinion of the Court.

Q. Admiral Keppel is charged with "negligently performing the duty imposed on him." Inform the Court if you know of any act of his on the 27th of July that confirms the charge?

A. I do not hold myself a competent judge of the conduct of a person so high in command. I am a young officer, and stand here as an evidence, and not as a judge, I must beg leave to decline answering it.

Admiral Montagu. I do not ask your opinion as a judge, but as an officer, as to your knowledge—Then, Sir, did Admiral Keppel, as far as came within your observation, by his conduct on either the 27th or 28th of July, tarnish the honour of the British flag?

A. I beg leave to decline answering that, for the same reasons given to the previous one.

Q. by Admiral Roddam. You said the French fleet seemed to wish to renew the action, what were your reasons for so thinking?

A. The



A. The French fleet forming a line to leeward of the British.

Q. When they were forming a line on the starboard tack, if they had intended to renew the action, could they not have fetched within distant shot, and engaged if they pleased?

A. Yes.

Q. You say you did not think the commander in chief intended to renew the action that afternoon after hauling down the signal for battle—What were your reasons for so judging?

A. Standing from them and carrying so much sail that we could not keep up with him or preserve our distance.

Q. Did the Formidable make any signal that you could not keep up?

A. No.

Q. If you had, do you not imagine the Admiral would have shortened sail?

A. It appeared to me the situation of the Formidable was such as did not occasion to make such signal.

Q. Is it the commander in chief's business to look to other ships, or they to look at him?

A. Certainly the junior officers place.

Q. Was not the signal for the line of battle flying on board the Victory while she stood towards the enemy?

A. I never saw it flying.

Q. Why did not the Formidable fire on the French ships which you said were so near to you on the 28th in the morning, which would have shewn the Admiral they were so near as one mile?

A. I must beg leave to refer you for answer to the Vice-Admiral.

Q. Had you any orders to do it?

A. No.

Q. by

Q. by Capt. Duncan. Was the Formidable at any time of the day of the 27th, in such a condition as not to be manageable?

A. No.

Cross-examined by Admiral Keppel.

Capt. Bazely has on some occasions refused giving his opinion, in others he has given it, which is not consistent, but as he says the Admiral did not wish to renew the engagement, and gives for reason, that he carried so much sail. I now ask him what sail the commander in chief did carry in the afternoon of the 27th, while standing to the southward?

A. I cannot particularly recollect what canvas she had, my reason for so saying, was the Victory's fore reaching the Formidable.

Q. Was the Victory's top-gallant sails set?

A. I don't recollect they were.

Q. Was her main tack a board?

A. I did not see her main sail set.

Q. Were all the reefs out of her topsails?

A. I cannot answer.

Q. Was her gib and stay sail set?

A. The situation the Formidable was in a-stern of the Victory, it was impossible for me to say what sails were set.

Q. Then inform the court how you know she carried much sail?

A. I mean to explain myself about much sail.

Admiral Keppel. A direct answer.

Witness. As the Admiral has declared he means to examine me close, I beg leave to recollect myself. In the disabled state the Formidable was in, what I have related to the court is true, with respect to the Victory's being at that time, (to the best of my recollection) under her top-sails and foresails.

Q. Did

Q. Did not that sail suffer the French leading ship to range up a-breast under her top-sails, being parallel to the Victory?

A. To the best of my recollection, the van of the enemy's fleet appeared to me to be a-breast of the Victory about dark. The van of the enemy had only their top-sails.

Q. Do you understand the whole of the 31st article of the fighting instructions?

A. I have read it frequently.

Q. Was any part of the British fleet leading with a large wind?

A. None.

[Thirty-first article read.]

It states, that when the Admiral perceives any ships leading with a large wind, he is to hoist a particular flag, and fire a gun.

Q. Do you now, Sir, take upon you to say, that the Vice-Admiral of the Red was not called down by message?

A. I do not know.

Q. Do you know how many ships the Vice-Admiral of the Red had with him at this time?

A. I think with himself nine.

Q. That is the whole of his division, one excepted, is it not?

A. Yes. I am sure of nine, I am not certain to the other.

Q. Was the Vice-Admiral of the Red at that time, or the Admiral of the Fleet nearest to you, and was it at that time you thought the Formidable might be cut off by the French rear?

A. The Vice-Admiral of the Red was a mile and a half, the Victory two miles: it was not the time I thought the Formidable in danger?

Q. What time was it then?

A. Before we opened our fire there appeared a great probability to me that the French Admiral intended it.

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Q. Do you know the condition of the ships of the center and Vice-Admiral of the Red that came out of action, before the Vice-Admiral of the Blue himself came out of action?

A. I know the state of no ship but the one I commanded.

Q. Then do you feel yourself justified in swearing as an officer, that the action might have been renewed with advantage, if the Admiral had wore as near to the rear of the enemy as the Formidable did, and had doubled on the enemy, with the rest of the ships; at the same time that you confess yourself ignorant of the condition of every ship in the fleet except your own?

A. I have said, that had the Vice-Admiral of the Red, and his division, bore down; and if the Admiral had advanced with his division to have renewed the engagement, it would have obstructed the enemy from forming a line so immediately.

Q. That does not answer my question?

A. That is the answer I wish to give, and must give.

Q. Do you take upon you to say, uninformed of any ship but your own, that the Admiral had a sufficient number of ships with him, formed in a line on the larboard tack, and to support him, as to prevent the French fleet forming the line on the starboard tack.

A. I do not recollect the Admiral being on the larboard tack, in a line with ships with him.

Q. Can you inform the Court the situation of the French fleet at the time you saw the Vice-Admiral of the Red in the Victory's wake?

A. I think forming their line a-stern of us and to leeward withal.

Q. What was the situation of the Vice-Admiral of the Blue at that time with respect to the Victory and Vice-Admiral of the Red?

Y

A. I



*Capt. Bazely.]*

( 166 )

A. I think the Vice-Admiral of the Red was formed rather before the lee-beam of the Formidable, and a-stern of the Victory.

Adjourned till ten o'clock this morning.

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*January 22.*

Captain B A Z E L Y ' s *Cross-Examination.*

Q. Did you keep any book of the signals ?

A. Two midshipmen did, a Mr. Hoggart and a Mr. Geering, who are since made mates, but I am sorry to say they are shamefully incorrect.

Q. Have you ever examined them since the action ?

A. No.

Q. Then how do you know they were incorrect ?

A. By other people's copies.

Q. Who appointed those midshipmen to that birth ?

A. The Vice-Admiral.

Q. Have they ever acknowledged them to be erroneous ?

A. Not that I know of.

Q. Did the master take upon him to enter the signals in the log-book different to what they were in the minutes taken by the midshipmen ?

A. I don't know that the signals in the log-book differ from the minutes, but I observed there was very little mention of signals in the log-book.

Q. Can you state to the Court the difference ?

A. No.

Q. Had not the midshipmen appointed to take the signal the best opportunity of seeing them ?

A. I know not.

Court. Explain what you mean by saying the minutes were erroneous ?

A. They

A. They were not entered full; what I mean is, there were omissions, there is no erasement on the log-book.

Q. Can you take upon you to say, that the minutes and log-book differed as to signals?

A. I cannot say.

Q. Do you know where the minutes are?

A. Since leaving the Court yesterday, I have enquired of the masters and different officers of the *Formidable*, if they knew any thing of the minutes of the signals of the ship from the day of battle to the arrival of the ship in Plymouth, and I am informed, that a Mr. Perry, late midshipman of the *Formidable*, now lieutenant of the *Triumph* at Chatham, took the minutes with him, which I never knew or heard of until this morning.

Q. Was you told this morning when they were delivered to Mr. Perry?

A. When Mr. Perry was appointed to observe signals in the ship in the room of Mr. Hoggart and Geering, who were appointed mates.

Q. You have said the Vice-Admiral of the Blue and his division, were in their proper station on the larboard tack to have formed in the line of battle, if the Admiral had made signal for that purpose, I will ask you, could the *Formidable* and the rest of the division have got in their place without making a-board, or the *Victory* bearing down to them?

A. I apprehend the *Formidable* could not get right a-head of the *Victory*, without making a-board, or the line have been completely formed, without Admiral had edged away for that purpose.

Q. Was the Vice-Admiral of the Red and his division considerably to windward of the *Victory*?

A. I think on the weather-quarter, and a-stern of the *Victory*, three miles distant from the *Formidable* to the best of my recollection.

Q. Must they not have bore down likewise as far to leeward as the Vice-Admiral of the Blue, and thereby increased the distance of the whole fleet from the French?

A. Yes.

Q. When the signal was made for the whole fleet to tack that morning at ten o'clock, did the Formidable tack at the time the Admiral tacked?

A. I think she did.

Q. At what hour did the Formidable back her mizen topsail, when drawing near the enemy?

A. I cannot answer particular to time.

Q. You said the mizen topsail was backed, to prevent getting into the Ocean's line of fire, how long was it kept a-back?

A. Until she had passed the French line.

Q. Were the ships a-head and a-stern of you, joined to the center, (at that time) obliged to go to leeward, and of the line, on account of the ships coming up a-stern, pressing upon them?

A. To the ships a-head, I cannot speak to, only to one ship that passed on the Formidable's lee, while she was running down the French line.

Q. Do you know that ship?

A. I do not.

Q. Do you know what ship was next a-head of the Formidable during the action?

A. No.

Q. What did you not back your mizen topsail for the Ocean?

A. Yes, and as well for the ships a-stern to close.

Q. How many of the French ships did you pass a-stern of the French Admiral after you began to engage?

A. I did not count the ships.

Q. May

Q. May I ask where you was yourself at the time of running down the French line ?

A. Fore-part of the quarter-deck, starboard-side.

Q. Looking at the enemy ?

A. Yes.

Q. How many three-deck ships had the French ?

A. There appeared to me two.

Q. Were they tolerably near together ?

A. I cannot answer.

Q. Can you inform the Court how many French Admirals there were tolerably close together ?

A. I cannot.

Q. Was the irregularity of the French line the cause of the distance that the Formidable engaged different ships as she passed along, or did the Formidable at some times bear away ?

A. The Formidable did at one time going down during the action bear up a little to avoid being aboard one of the enemy's ships, the gib-boom nearly brushed the lee-leach of her main topsail.

Q. Did that ship so near give a warm fire into the Formidable ?

A. No. She appeared to be silenced before we reached her.

Q. Then was not the Formidable, and the ships a-stern, succoured by the ships that had engaged those French ships before she came that length ?

A. They certainly received less of the fire, in consequence of the van and centre divisions passing along before us.

Q. As you said the Formidable wore after passing the rear of the French ships, and seeing the Admiral advancing towards the enemy on the larboard tack, that the officers and men on board the Formidable were ordered to quarters, expecting to renew the battle when the Admiral came up, I desire to know



know whether the Formidable did not wear again without signal, and pass a-stern of the Admiral, while his head was towards the enemy ?

A. Yes, she did.

Q. When you passed the Victory, was the signal for the line of battle then flying ?

A. I believe it was.

Q. When the Vice-Admiral of the Red endeavoured to get into his station, after being in the rear of the Admiral, on the starboard tack, did he not pass between the Formidable and center division ?

A. I do not recollect.

Q. You think you saw the signal on board the Victory for line of battle as you passed, can you say it was ever hauled down ?

A. I cannot charge my memory.

Q. Do not you know when the signal for line of battle was hoisted on board the Formidable ?

A. I do not.

Q. Are you positive it was flying at five o'clock in the afternoon, on board the Formidable ?

A. I think it was, but I cannot speak positive.

Q. How do you know the time the Fox came to the Formidable, as you say you do not recollect time ?

A. I judged it to be near sun set.

Q. What was the confusion you spoke of on board the Formidable ?

A. Nothing more than is natural to a ship coming out of battle.

Q. At what time do you mean the confusion happened.

A. The whole afternoon getting the ship ready to obey the Admiral's signal.

Q. When you beat to arms at two o'clock on the morning of the 28th, was it upon the approach of any ship to leeward of you ?

A. No

A. No.

Q. Where was the Formidable at two o'clock in the morning, with respect to the Admiral?

A. A-stern, and to windward withall.

Q. Did you see the Admiral's lights during the night?

A. Yes, most of the night when I looked.

Q. Was the distinguishing lights of the Formidable burning at that time?

A. No, they were not.

Q. Were there any ships between the Formidable and French, you saw on the morning of the 28th.

A. I saw none.

Admiral Keppel. I have done with the witness.

Question by the President. I think you say the Fox cheered the Formidable first, and at that time you was on the fore castle, can you take upon you to say there were no cheers from the poop on the quarter-deck of the Formidable, at the time the message was delivered?

A. None that I heard or know of.

Question by the President. You have said in a single ship you would not have hesitated to pursue a ship that ran from you, on a supposition that she was beat. In the condition the Formidable was in, would you have ventured to pursue her on a lee-shore?

A. The situation the Formidable was in, I would not have hesitated a moment to pursue her into port; if I had I should not think myself justifiable in a single ship.

Question by the President. I mean in the condition the Formidable was in when she left off engaging, I say again in that condition, and on a lee-shore, would you have pursued her?

A. Knowing myself upon a lee shore, it depends upon the course I was steering, I do not know that  
coast

coast ; if I was upon a lee-shore, I would not have pursued ; but what I call a lee-shore, is when the wind blows on the land, and I can see it.

Question by Admiral Montagu. From the account Capt. Bazely, has given us of the ertoneous manner in which the midshipmen took the minutes of the signals, I have been led to look into the Formidable's log-book, and find three leaves cut out between the 25th and 28th of July, I desire to know how that happened, I see there is a sheet of paper, fresh sewed in, and that sheet takes in the minutes of the day of action ?

A. I do not know, so help me God. I hold a log-book sacred.

Admiral Montagu. *It appears to me to be a very extraordinary thing to see in an ADMIRAL's log-book leaves torn out, and particularly in such a MATERIAL PLACE.*

Sir RICHARD BICKERTON, of the Terrible,  
called in and sworn.

Questioned by Sir Hugh Palliser. At what hour did you first see the French fleet on the morning of the 27th of July ?

A. At five o'clock.

Q. Did they appear to you any time that forenoon to be in a line of battle, and at what time ?

A. They appeared to be in one soon after I tacked, which was a little before ten o'clock. I must beg to observe to the Court, when I came to range along, found they were not so regular as I thought they were.

Q. Do you remember some of the Vice of the Blue's division that morning chasing to windward by signal ?

A. I do, about six o'clock ; about four.

Q. Do

Q. Do you remember whether there were not more than four chased when those signals were thrown out?

A. I do not know, I did not chase them, my signal was not one of the four.

Court. Do you know the names of the four?

A. only of two, the Egmont and Robuste.

Q. Were there not two more signals to chase?

A. I believe the Worcester's signal was made the time the signal was made for the Terrible.

Q. Did those signals cause that part of the fleet to be dispersed and separated from their flag, and each other?

A. It certainly occasioned them to separate.

Q. On the morning of the 27th of July, was the Vice of the Blue, with his division a-head of the Admiral, some on his lee-bow, some to windward, or how were they situated?

A. I think the Vice-Admiral of the Blue was a little to leeward of the Victory, and towards the lee-beams. The Terrible on his larboard bow.

Q. by the President. Was the signal that was out, a means of bringing them to action sooner, or did it prevent them coming to an action at that time?

A. It was a means of their fetching farther to windward, and engaging more of the enemy.

Q. by Sir Hugh Palliser. Was there any signal made for the whole division to chase?

A. I did not see it.

Q. When ships chase from different situations and which differ in their rates of sailing, can they one and all come into a situation to tack together?

A. I think not.

Q. Was it not the Admiral's practice to make signals for ships chasing to tack when he judged they should do so?



A. I do not remember his doing it so often that cruize.

Q. Did he make signal that morning for particular ships?

A. I did not see it.

Q. by the President. You did tack, I think you say then, you tacked according to your own judgment, not by signal?

A. Yes.

Q. by Sir Hugh Palliser. Do you mean to say you tacked before the general signal for the whole fleet to tack together?

A. We tacked a little before.

Q. If those six ships had not been taken from the Vice-Admiral, might not the whole of that division have gone into action, together with their Admiral, in a collective body, to support each other?

A. They certainly would have been more connected if they had not chaced.

Q. by the President. Were you close upon a wind when you first attacked the enemy?

A. We had occasion to keep away after the first ship.

Q. Were you to leeward or to windward of the Vice-Admiral of the Blue when the signal was thrown out to chase?

A. We were on the Vice-Admiral's larboard beam.

Q. by Sir Hugh Palliser. Do you think that ships proceeding along an enemy's line, scattered and separated from each other, are exposed to more or less damage from the enemy, than if a number of ships proceed collectively together so as to support each other?

A. I should think the more ships are together the less damage each would receive.

Q. Did

Q. Did not the chasing ships so far as you know come into action separately and without each other ?

A. There were three ships a-stern of me which appeared pretty near together.

Q. Do you remember the time when the Terrible, in the thick of the smoke (from the Terrible and Formidable) ran close to the Formidable's stern ?

A. I remember the Formidable coming across me while I was engaging the ship a-head of the Bretagne.

Q. Until the time I am speaking of, did any other of our ships go so near the Terrible as to afford support to each other ?

A. I believe not.

Q. Do you know if part of the chasing ships of the Blue division passed a-head of the Vice-Admiral, and joined the center division ?

A. I do not.

Q. At the time you was near the Formidable, did you shoot a-head of her, or remain a-stern ?

A. I remained a-stern some time, but was obliged afterwards to bear up to prevent being aboard the Formidable.

Question by Admiral Montagu. Was the Formidable's mizen topsail a-back at that time ?

A. I do not recollect seeing it at that time, but I saw it a-back.

Q. Did you see it a-back before you shot to leeward, for fear of being a-board of her ?

A. I really do not know.

Q. by Sir Hugh Palliser. In proceeding along the French line, did not our ships go large ?

A. They went from the wind.

Q. When you shot to leeward of the Formidable, how many of the Vice-Admiral of the Blue's division then remained a-stern of him ?

*Sir R. Bickerton.]* ( 176 )

A. I know of none but three.

Q. After running to leeward to avoid being aboard the Formidable, did you shoot a-head of him?

A. Yes, upon her larboard bow.

Q. Did you find any other ship near her?

A. The America was very near to her.

Q. Did you and the America go on a-head?

A. I only knew of myself, the smoak was so thick.

Q. When you saw the America, was she on your weather or lee-bow?

A. On the lee bow.

Q. I think you said you did not find the French line so regular as you thought; I would wish to ask, if the line was not perfect, was it otherwise than might be expected from a number of ships engaging it that had passed before?

A. I really do not know.

Q. How far was the British fleet extended from van to rear at beginning of action after the chase?

A. The Admiral, and Vice-Admiral of the Red seemed to be very near together; as for the chasing ships, they might be about seven or eight miles distance from the Victory.

Q. With what part of the French line did you begin to engage?

A. The third ship.

Q. By your description of the van and center divisions being pretty well together, was not the Admiral of those divisions well supported with the whole force of their divisions?

A. At the great distance I was from them, I think they were.

Q. From the separation of the Vice-Admiral of the Blue's division, did he go into action as well supported as the other flag officers?

A. I believe not.

Q. Was

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Q. Was he as well supported during the whole, or at any time of the action?

A. It is not in my power to answer that.

Q. When you passed the rear of the enemy's fleet, did you observe where the Admiral and his division were, and where the Vice of the Red, and his division were?

A. They were a-head of the Terrible standing towards the enemy.

Q. Did the Admiral, with the ships with him that passed the rear of the French fleet, were they so near to the enemy, as to be ready to immediately renew the fight, when the Vice of the Blue came out of it, or to countenance and support him, whilst he remained engaged with the few ships with him, when the Admiral had passed the whole.

A. The ship being greatly disabled, I was anxious to get her ready to renew the attack, therefore did not observe.

Q. From the very brisk fire kept up by our ships that did engage, do you not think that the French ships must have suffered in proportion to ours?

A. Some appeared much disabled, others did not.

Court. Give some account of your ship's damage.

A. Fore-yard shot through, about fifteen feet from the larboard yard-arm, main-mast two shot in it, main-top-mast one shot through, mizen-mast that shot through, and carried away one third of it, mizen-yard shot through, the rigging in general very much damaged, main-top and fore-sails cut to pieces, the other sails much damaged, five shot in her hull, which occasioned her to make much water, and obliged me to stand longer on that tack than I would.

Q. by Admiral Montagu. You have just said some of the French fleet were much disabled, were the English ships that had been engaged in a condition to renew



renew an attack, at the time the Vice-Admiral of the Blue spoke of, when immediately after he came out of action?

A. From what appeared to me, I do not think they were.

Q. Was your ship?

A. She was not.

Q. by Sir Hugh Palliser. Suppose you had been engaged a-long-side of a ship on the same tack (not passing on contrary tacks) was not your ship in condition to have continued action with any ship that might come along-side of you, until something had happened decisive?

A. I certainly should have continued the action as long as I could.

Q. Was your ship in a condition to oblige you to have quitted a ship you was engaged with?

A. No. I certainly should not quit her while I could manage my ship.

Admiral Arbuthnot. You have described the Vice-Admiral of the Blue to be to leeward of the Victory on the 27th; if the Admiral had then bore down in the Vice-Admiral's wake, to form the line, as the wind then was, do you think the enemy could probably have been brought to action on that day?

A. That must depend entirely upon the enemy, but I believe had the Admiral bore down, we should not have brought them into action, as they always avoided coming to action.

Q. by Admiral Montagu. Did you not come into action as soon, although you chaced, as you would have done, provided the Admiral had made the signal for a line of battle, and you had not chaced?

A. I believe sooner.

Q. by Sir Hugh Palliser. Do you remember what part of the French fleet the Formidable began to engage,

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engage, was it a-head or a-stern of the French Admiral?

A. No. I never saw the Formidable in action, until she was engaged with the Bretagne: she might have fired before.

Q. Where did the Victory begin?

A. I really cannot tell.

Q. Then, Sir, if the Formidable began with the first or second ship next the French Admiral, suppose the Victory had been in a line with her a-head, might they not have begun the action successively together in the same place?

A. If the Victory had been there, there is no doubt but she would have engaged where the Formidable did.

Q. by Admiral Montagu. In the situation you was in, could you be a judge whether the van or center were properly supported or engaged, or with how many ships they did engage?

A. It was impossible.

Q. by Sir Hugh Palliser. You admit if the Victory had been in a line with the Formidable, she might have fetched the same ship the Formidable did. If the Victory did not begin engaging as far a-head of the French Admiral as the Formidable, would she not have been in a more advantageous situation for attacking, if she had been in a line with the Formidable?

A. I said before, if the Victory had been where the Formidable was, she would have engaged the ship the Formidable did.

Q. As an old officer, and one that knows the service well—Do you understand that a flag officer of a division has a right to call ships in from chasing, after the Commander in Chief has sent them out to chase by signal (without the Commander in Chief first makes the signal for recalling them.)

A. I

A. I never saw it done.

Q. From the discipline of the service, has a flag officer, commanding a division, a right to do so?

A. I do not know.

Q. by Admiral Montagu. As an old officer, the situation the French fleet were then in, and the wind become so far favourable as to admit the British fleet to bring them to action, do you, although your signal had been made to chace, and no object in view but the French fleet, do you not think, as an officer, it was your duty to return to the British fleet, and get into your station as soon as possible?

A. I do, and I did.

Q. by Sir Hugh Palliser. Then do you mean to say, that you thought it your duty to go into action as soon as you could, in preference to any thing else from that signal?

A. I said before, I thought it my duty to get into action as soon as I could.

Q. How do you think the Vice-Admiral of the Blue could have been authorized in calling in those ships that were chacing to get into their station, the Commander in Chief having made no signal for that purpose?

A. I don't know.

Q. Did you see the Formidable after you came out of action?

A. I did not take notice.

Q. When did you afterwards take notice of it?

A. About three o'clock in the afternoon, I think.

Q. I think you say you saw the Admiral when you came out, though could not speak to the distance he was at; do you remember at the time you saw the Admiral, the signal for battle was hauled down or flying?

A. I do not.

Q. Where

Q. Where was the Vice of the Blue, when you saw him about three o'clock?

A. I really cannot tell.

Q. At what period can you give an account of his situation?

A. After I wore, I think I went to windward of the Vice-Admiral of the Blue, and got into my station.

Q. Where was the Vice-Admiral of the Red, and his division, at the time all firing ceased?

A. I think on the Admiral's bow, but I am not certain.

Q. Did you see the French break up their line, and stand to the southward?

A. I did not.

Q. When did you first observe them standing to the southward?

A. A little before I wore.

Q. Was it the Vice-Admiral of the Blue and part of his division that came out of action last, and what ships?

A. They were. Their names are the Terrible, Elizabeth, Worcester and America.

Q. Whilst you was standing to the southward, was the French fleet a-stern?

A. We lay to. I cannot say whether we were falling off or no.

Q. Did you ever know in the course of your service, that whilst the signal for line of battle a-head was flying, the Commander in Chief ordered the van of his division to take the place of each other, before he was satisfied that one of those divisions were disabled from taking their proper station?

A. I have not.

Q. Which division, according to line of battle, was to lead on the starboard tack.

A. The Vice of the Red.

A a

Q. Did



Q. Did you see the signal for ships a-head to bear down with a particular number of ship's pennants flying.

A. I did. The Terrible was one of them.

Q. Do you remember the first time I saw you after, your expressing your concern, that I thought it necessary to make your signal for that, and I replied to you, I only repeated the signals from the Admiral, and at the same time, did you not say when you came among the ships, you was not able to keep your station exactly, your rigging and sails not being completely refitted, and that other ships called to you to get out of their way?

A. I believe I do.

Q. What time did you bear down in consequence of that signal?

A. About seven o'clock.

Q. Do you know of any signals made in the French fleet that night, and at what time?

A. I think there were some false fires about eleven o'clock?

Q. Was it perceived at that time that they bore away?

A. I did not observe them, for I kept my men to quarters all night, and had lights on the lower gun deck.

Q. Were they pretty near to you before the signals of false fire?

A. About four miles distant at dusk.

Q. What part of the French fleet was in sight the next morning?

A. Three sail, one I thought a line of battle ship, the other two frigates.

Q. How near was the nearest to the Terrible?

A. About four or five miles to the southward, on the larboard quarter soon after dawn, they afterwards  
crowded

crowded sail, and bore away as soon as they discovered us.

Q. Were they pursued ?

A. Not that I saw, there were signals out for some ships to chase, which were soon hauled in again.

Q. Was any other part of the French fleet seen that morning ?

A. I did not see any.

Q. Did you know of any ship making signal to that purpose ?

A. I do not.

Q. Suppose, Sir, the British fleet had chased those three ships, and supposing the rest of the French fleet to have been leeward, was there not a probability of our undamaged ships coming up with either of those three ships, or the disabled ship of their fleet, if the rest of the fleet left them, or if they staid by them, might not another engagement have been brought on ?

A. I think not.

Q. What sort of weather was it on the morning of the 28th ?

A. Rather heavy, not much wind, a poppling sea.

Q. If our undamaged ships had chased those three, what is your reason to suppose we should not have come up with them ?

A. There appeared to me very few of our ships fit for chasing ?

Q. Do you suppose there was none ?

A. There might be some.

Q. You suppose two of those ships were frigates ? had we not four frigates with us ?

A. Yes, we had.

Q. Some on copper bottoms ?

A. Yes.

*Sir R. Bickerton.] ( 184 )*

Q. Being the middle of summer, short nights, and not much wind, do you apprehend it would have been attended with any immediate or imminent danger, if the British fleet had pursued the fleet of France, at least so far as to have seen them into port, no ship in the fleet having lost their mast?

A. I think, carrying a fleet disabled, as that was, there must have been great danger on a lee-shore, the wind was, I think, W. N. W.

Q. With the wind at W. or W. N. W. and moderate weather, if the fleet had gone within sight of Ushant, that is, within three or four leagues, would that be running the fleet into danger on a lee-shore?

A. No, I do not think it would, because the channel was open, on the 27th of July we were distant thirty-seven leagues, on the 28th we were thirty-four.

Sir Hugh Palliser. I have done.

Admiral Arbuthnot. I think you observed the three French ships standing to the southward, I think the medium of two days is about E. half N. from Ushant. Do you think if you had steered that course there would have been a probability of seeing the French fleet on the 28th.

A. I might have seen them at a very great distance.

Admiral Montagu. Supposing the French fleet had not run away in the night, but had continued to lay too to leeward, as they were the night before, or jogging on with the English fleet on a parallel line, do you not think Admiral Keppel would have attacked them in the morning, although he did not think proper to pursue them or chase the three sail.

A. I do most certainly think he would.

Q. by Admiral Montagu. You are an old officer, have been more than once in action, you have served under

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under a very brave man, (Admiral Boscawen) the Admiral now here trying, is charged with negligently performing the duty imposed on him, I beg you will acquaint the Court, if you know of any instance on the 27th of July, in which he was guilty of such neglect, or did not perform the duty imposed on him?

A. Ever since I have had the honour of knowing Admiral Keppel, and serving under him, I have had the greatest esteem for him, I had the highest opinion of him as an officer, and I have so still, but as I have been giving evidence upon facts, my answering that question would, I think, be judging upon it, which I have no right to do.

Q. Then I am to suppose you do not know of any neglect, I mean, did you see any with your own eyes; I do not ask your opinion?

Court. We must withdraw.

Withdrew.—Returned.

Question again put.

A. No, I did not see any thing.

Admiral Keppel. Sir, it gives me great uneasiness, when I am forced to ask the indulgence of the Court so much beyond their usual hour, but when I see such a shameful and alarming circumstance, as three leaves cut out of a log-book, especially in so material a part, a part that affects my life, I must intreat their indulgence, late in the day as it is, that the Master of the Formidable may be immediately called in and examined to that part, and not defer that business until to-morrow.

Sir Hugh Palliser. I shall, in the course of my calling witnesses, call him among the rest.

Admiral Keppel. I must, with the indulgence of the court, desire he be called now.

Admiral



Sir R. Bickerton.] ( 186 )

Admiral Montagu. It being so exceeding late, I must beg that we adjourn until to-morrow, and that the Master be ordered to attend.

Admiral Keppel. I beg that my request may be entered on the minutes. Agreed to.

Adjourned.

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January 23.

Sir RICHARD BICKERTON *called in and examined by Admiral Keppel.*

Q. What tack was the French fleet on, when they appeared on the morning of the 27th to be in a line of battle at ten o'clock.

A. Larboard.

Q. Did you lose sight of them any time after ?

A. No.

Q. Did the Formidable fetch in a-head of the Terrible, with the French fleet ?

A. She did.

Q. How many ships of the rear of the French had the Formidable to pass, when you was compelled to bear up and go to leeward of her ?

A. I think three.

Q. Did the ships of the Vice-Admiral of the Blue, that were a-stern of them, come out of action nearly at the same time as the Terrible ?

A. I cannot say.

Q. What time did the Terrible come out of action ?

A. About half past one o'clock.

Admiral Keppel. I won't trouble Sir Richard any more.

Sir Hugh Palliser. The cutting the leaves out of the Formidable's log-book, was a fact I was totally ignorant of, until discerned by a member of the Court, nor could any person be more astonished than myself;

myself; it is my wish that the whole be investigated; I shall therefore call the Master and Mate that made the entries; and in giving their evidence, I desire they may be put to the severest test, and that the Court and Admiral Keppel may examine them without any previous questions from me.

WILLIAM FORFAR, Master of the Formidable,  
called in and sworn.

Admiral Keppel. My reasons, yesterday, for desiring the Master might be immediately called, was to prevent any intermediate conversation with him on the subject; I therefore now ask him "who was the person, that first told him the Court had discovered any extraordinary alteration in the log-book?"

A. I heard it in a shop yesterday, a woman telling another person that something had been said about the log-book.

Q. Had you any conversation, and with whom, touching the affair about the log-book, before the Court arose yesterday?

A. There were several, I do not recollect their names.

Capt. Boteler. At what time?

A. When I heard about the log-book, I came into Court, on purpose, for fear of being wanted about one or two o'clock.

Admiral Keppel. Can you name no person who spoke to you, before you came into the witnesses room?

A. I met Mr. Bailey, Master of the Foudroyant, who told me I should be wanted; I answered I am going to the Court, having heard that some leaves have been torn out of my log-book.

Q. Did any other person speak to you?

A. I

*Mr. Forfar.]*

( 188 )

A. I don't recollect any, until I came into the witnesses room.

Q. Did any person speak to you here ?

A. I think Capt. Wallingham said to me, " I suppose you are here on account of the log-book ?

A. I answered yes.

Q. To whose house did you go, after the Court was up ?

A. I went to the next door, to Sir Hugh Palliser, where we generally resort.

Q. Do you live there ?

A. No, I don't sleep there.

Q. Had you any discourse about the log-book yesterday, after the Court broke up ?

A. Yes.

Q. With whom ?

A. Capt. Bazely.

Q. Does he live at that house ?

A. Yes, he sleeps there.

Q. How long did you remain at Capt. Bazely's house, before you went to Sir Hugh Palliser's ?

A. I cannot say ; perhaps half an hour.

Q. How long did you stay at Sir Hugh Palliser's ?

Sir Hugh Palliser. If it will same time, I admit I talked with him.

Admiral Keppel. The Vice-Admiral desired he might be examined in the strictest manner ; therefore I hope I may proceed ?

A. About an hour, or an hour and a half.

Q. Who was present ?

A. Most of the officers of the ship that were on shore.

Q. Name them ?

A. Capt. Bazely, Lieut. Waller, Mr. Beeting, first Lieutenant, Mr. Hill, third Lieutenant, Mr. Meredith, Lieutenant of marines, and Mr. Hood,  
another

another Lieutenant, Mr. Thomas, Mr. Hartwell, and two lawyers.

Q. Were there any questions put to you about the log-book?

A. Yes.

Q. When was the account of the 25th, 26th, and 27th of July, entered in the log-book, I mean the account that is here now?

A. The 25th and 26th were entered the days of the log's being taken.

Q. The 27th; when was that taken?

A. Not until a day or two after, I think the 30th.

Q. What was the meaning of that delay?

A. I took it on a sheet, to shew the Captain and Admiral before I entered it in the log-book.

Q. Was it approved of?

A. What I took was.

Q. Without alteration or amendment?

A. There was something added, I recollect something had been omitted.

Q. Do you recollect what they were?

A. No. It was with respect to signals and time, I believe.

Q. Were there any minutes of signals taken by any body that this log-book was copied from?

A. There were before we came to action.

Q. Were none taken after, during that day?

A. None that I recollect.

Q. Is there more than one log-book?

A. I have another.

Q. Is that exactly the same as the one on the table?

A. Yes, except about three ships, whose signals were made to chace on the morning of the 28th, which is not in the one before you.

Q. Do you know who cut the original entries out of the log-book of the 25th, 26th, and 27th of July?

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A. Yes,



A. Yes, one of the mates, Mr. Winkworth.

Sir Hugh Palliser. He has not said there was any thing on the leaves cut out.

President. What was the occasion of the leaves being cut out ?

A. One I saw cut out, Mr. Winkworth had spilt some ink upon it.

Q. When was that torn out ?

A. I think the 25th or 26th of July.

Q. When were the rest torn out ?

A. I did not see the rest torn out.

Admiral Montagu. Take the book before you, recollect yourself; the leaves of the 27th and 28th are written upon in such a manner that they could not be torn out on the 25th or 26th, look, and recollect yourself, (the book handed to him)

A. To the best of my recollection when I came down, Mr. Winkworth told me he had ruled one of the leaves for two days, and it would not contain it, so he put all in one; I believe that was the 26th of July.

Q. When was the second leaf put in ?

A. The other leaf he omitted putting in the minutes from the Midshipmen, because he had not put the hours down; he told me that was the reason of his tearing the leaf out.

Q. Did the Mate shew you those minutes ?

A. To the best of my recollection, he had wrote it off before I came down.

Q. Did you see the minutes he wrote it from ?

A. Yes.

Q. Do the leaves so put in agree with the minutes ?

A. Yes.

Q. Do you know what became of the leaves that were torn out ?

A. No.

Q. Do

Q. Do you know where the original signals, from which the log-book is copied, are now?

A. No.

Q. As the day's log of the 27th and 28th were not entered until the 30th, how could the Mate have entered them before you went down on the 26th?

A. He took them off the board before I came down.

Q. Did the board continue marked from the 26th to the 30th of July?

A. No.

Q. Did you ever go to any Master of any ship of the fleet under my command, and ask to see their log books?

A. No.

Q. Did you not ask Mr. Reed, Master of the *Queen*, to let you see his book?

A. I went on board the *Queen* once, and he was writing his log, and I looked at it.

Q. I say, did you not ask to see his log, and compare it with yours?

A. I don't recollect.

Q. Had you the *Formidable's* log book with you when you was on board the *Queen*?

A. No.

Q. Did you compare the sheet that was blotted with the entry, to see it was fairly transcribed?

A. I don't recollect looking at it.

Q. Was the log book now in your hand, made since cutting out of the leaves of that on the table, or before?

A. The book was made at the time I first went into the ship.

Q. Was the entry in this book made from the original minutes that were cut out?

A. No; copied from the one on the table.

Q. by Admiral Montagu. After the action, did you see the minutes made by the Midshipmen, on the poop, appointed for that purpose?

A. I saw what they made before ten o'clock, not after.

Q. Did you shew the minutes to the Captain, to know if he approved of them?

A. Not until I had seen the paper I took the log on.

Q. Did you not tell the minutes taken were erroneous?

A. No, I told him they were not all put down.

Q. How do you know they were not all put down?

A. By recollection.

Q. Did you make any alterations on the log board, or did you make any alterations in the minutes, they being erroneous?

A. The minutes were never entered on the log-board.

Q. Is it not the master of the watch's duty to see the minutes of every hour entered, and the remarks of transactions in that hour likewise put against them?

A. Yes; but the two Mates never having been on board a man of war before, they were not instructed in it. I apprehend the signals of a fleet are too many to be entered on a board.

Q. Then it was the Midshipman's minutes that were entered?

A. Yes.

Q. Then how comes it that there is but one signal of the fleet entered on that day's work, and why do not the Midshipman's minutes appear?

A. The only minutes he took was the account of the ship's chasing, I think.

Q. What book did you take your account from to work your reckoning?

A. From the board.

Q. Did

Q. Did you take it every four hours, or at mid-day?

A. I generally worked my day's work about eight o'clock in the morning, for fear I should be asked any questions relative to the bearing of the land.

Q. You have said two of the Master's Mates had never been in the King's service before as Mates, therefore you was fearful they were not so ready in marking the log-board, or writing it down in the log-book, as those Mates are that have been long in the service, therefore did those two Mates consult with you, or any other persons, before they marked down the transactions of the day?

A. No; I generally examined the board in the morning; if I saw any thing I disapproved of, I sent for them and pointed it out.

Q. Did you give any orders, or point out any thing wrong to those two Mates, of the transactions of the 27th or 28th of July?

A. No.

Q. by Admiral Keppel. Do you take upon you to swear, that there were no minutes of signals taken from the time the action ceased until dark?

A. I saw none from the Midshipmen.

Q. As the Midshipmen were appointed to take signals, and enter them in a book, why were they omitted on so important a day as the 27th of July?

A. I can give no other reason, than that were employed on other occasions, as they were the only Midshipmen we could depend upon.

Admiral Keppel. Mr. President, I shall ask no more questions concerning the minutes; but I cannot help expressing my surprize, that the Midshipmen should only take two signals to chace, omitting all the others by which they were called together, during the rest of the afternoon. I have one observation more to make



to make on the accuser's address to the Court; his offer was intended to carry the appearance of candour, when he requested the Master might be exposed to the severest examination by the Court and me, without any previous question by himself; whereas it now turns out just as I expected yesterday, when the Vice-Admiral resisted my application to call the Master immediately; he has been previously examined by Sir Hugh and his friends.

Sir Hugh Palliser. The postponing the examination of the Master yesterday was the act and proposition of the Court, before I said any thing; as to my speaking to the Master since that time about cutting out the leaves, it was natural that I should make enquiry into facts I was ignorant of, and so much surprized at; and I shall continue to give the Court the utmost information on that subject; and for that purpose I have sent expresses to find the Midshipman, who, I have reason to believe, is on board a tender in Wales; if he can be found, and has the original book, I will directly produce it.

Court. The prosecutor did interfere, saying he should call the Master himself.

Admiral Keppel. I beg the Court will appeal to their memory, and notice that I did yesterday desire their indulgence beyond the usual hour, on purpose to have an immediate examination of the Master of the *Formidable*, and it was objected to by the prosecutor; I once more beg they will notice that.

Admiral Montagu. Before I put a question which I have to put to the Master, I must beg the Court's leave to read the narrative from the log book of the *Formidable* of the 27th of July, as written in one of the new inserted leaves. Mr. Forfar, you say you did not dictate to the Mates on the 27th and 28th days of July,

July. I will read the narrative to you, and then I beg of you to inform the Court whether they are your composition or their's.

*The Narrative.*

27th. Moderate and clear, at ten minutes past one firing ceased. We saw without a main-yard and mizen-mast, one of their ships that seemed to be otherwise very much damaged, and who, as soon as the firing ceased, bore away, and run to the southward, accompanied by a frigate. After we passed the last ship, we wore, and laid our head towards them, as did the Admiral and Vice-Admiral, Sir Robert Harland. Soon after the French wore, and laid their heads to the southward; we did the same, and repeated the signal for the line of battle a-head a cable's length asunder. Our sails and rigging being very much damaged, we hauled to windward to knot and splice sails, most of them rendered unserviceable. At six o'clock, P. M. signal made for us to bear down in the Admiral's wake. At dusk the French formed in a line to leeward, extended parallel to us. The French Admiral, and those nearest to him in the centre, in the action, appeared to be almost in the rear, being the ship that had suffered most. Fresh gales and squally, with rain, most part of the night, and exceeding dark. At three A. M. having knotted and spliced most part of the rigging, and shifted some of the sails, bore down into our station in the line, expecting to engage at daylight, but, to our great surprize, at day-light, we found the whole French fleet had stole away under cover of a dark night, except three sail, which remained in sight, and immediately crowded all the sail they could to the southward. It is uncertain whether these ships had or not observed the motions of the rest of the fleet in the night, or whether they were left to leeward,

leeward, and by shewing lights to make us believe they remained in a line to leeward, and thereby deceive us, to cover their retreat.

Thus, after the two fleets had been in sight of each other four days, during which time we used every means we could to bring them to battle, and thereby crippled some of our ship's breasts, by carrying sail, the French keeping directly to windward of us.

In the action we lost our fore top-mast stay-sail, gib, and so forth; top-gallant-mast stay-sail, main top-gallant-mast stay-sail, and so on. In clearing ship, lost two cutters, which by lowering down, filled, and obliged us to cut them away. Several were employed in knotting and splicing the rigging, and splicing the sails of others, and gave me a piece of paper with some remarks that he had made; between the two I made the log-book for that day, and that log was approved by the Admiral.

Q. Are you certain the log-book, as it now stands, was approved by the Admiral?

A. It was.

Question by Sir Hugh Palliser. Do you know, or have reason to believe, that either myself, or Captain Bazely, had any knowledge of the leaves being cut out before yesterday, that it appeared to the Court?

A. I don't believe you had.

Q. by Captain Duncan. At what time did you leave the witnesses room yesterday?

A. When the Court broke up.

Q. Do you recollect what time you was on board the Queen, and saw the log-book?

A. The week before she sailed, the last time, with Lord Shuldham.

Ordered to withdraw.

Mr.

Mr. WINKWORTH, Master's Mate, called in.

Admiral Keppel. If the original minutes are ever found, it may then be necessary to call this witness, but at present I have nothing to say to him.

Ordered to withdraw.

Capt. JAMES KINNEER, lately first Lieutenant of the Formidable called in and sworn.

Q. by Sir Hugh Palliser. Do you remember when the Formidable came out of action, and had laid her head towards the enemy, the officers and men being ordered to return to their quarters in expectation of renewing the engagement, when Admiral Keppel should come up?

A. Yes.

Q. When did you first take notice where Admiral Keppel was after the action?

A. Not until we wore a second time, he was then at the distance of about a mile and a half, or two miles; I was quartered on the main deck.

Q. Do you remember the Victory and Formidable meeting after that?

A. Yes, she passed under the Formidable's stern to windward.

Q. Did the Victory stand to the southward after she had wore?

A. Yes.

Q. Was the signal for the line of battle a-head a cable's length asunder, flying on board the Victory and Formidable at that time?

A. I do, on board the Victory, but am not certain it was on board the Formidable.

Q. Did not the Victory increase her distance from the Formidable the whole afternoon?

A. Yes, in some small degree.

C c

Q. Did



Capt. Kinneer.]

( 198 )

Q. Did not the Formidable steer the whole afternoon, keeping the Admiral a little open under the lee?

A. Yes.

Q. Was not that her proper course for her fetching her station in the line of battle, if the Admiral had not sailed faster than us?

A. I think it was.

Q. As the Admiral sailed faster than the Formidable all the afternoon, while she continued to do so, was it possible for the Formidable to get into her station, agreeable to her signal then flying?

A. I do not think it was.

Q. Then, Sir, whatever signal might be made or messuages sent, was it possible for her to get into her station that afternoon, unless the Admiral had waited for her?

A. I think not.

Q. Do you remember a signal being made in the evening, for ships to windward to bear down, and several ships pennants let fly at the same time?

A. I observed the general signal, and the pennant for several ships in the Vice-Admiral's division to bear down at the same time, but I cannot say whether they were all let fly together.

Q. Were they repeated on board the Formidable, before or after the Fox frigate spoke to us?

A. To the best of my recollection, before she hailed us.

Q. Do you recollect who cheered first, the Fox, or the Formidable?

A. I am pretty clear the Fox cheered first.

Q. Where was you stationed at that time?

A. On the poop.

Q. Did the people on the poop cheer the Fox first?

A. No.

Q. At

Q. At what distance do you think the Formidable was from the Victory that evening at dusk ?

A. I think the Formidable was a mile to windward of the Victory's wake, and about three miles from her.

Q. At what time was it that the Fox spoke to the Formidable ?

A. About seven o'clock.

Question by the President. What was the message ?

A. I don't know.

Q. What, not know ! and you on the poop ?

A. I did not hear directly, I understood it was for the Vice-Admiral's division to bear down in the Admiral's wake.

Q. Did you hear any answer ?

A. No.

Question by Admiral Palliser. Do you recollect any of those ships signals being hauled in because they had been observed before the Fox came to us ?

A. Two ships to windward of the Formidable, which I believe were the Egmont and America, bore up shortly after the signal was made, and on the pennant being hauled in brought to again to windward of the Formidable.

Q. Are you of opinion, that the Formidable could have gone down into action, although she could not carry sail upon a wind.

A. Yes ; but she could not get in her station in the line.

Capt. Kinneer was then asked by Sir Hugh Palliser, if every thing in the power of the officers and men was not done the whole of the afternoon of the 27th, and morning of the 28th, to get the Formidable into a proper state to renew the attack ; and whether the men were not kept to their quarters, and the drums beat to arms, at two o'clock, on the morning

*Capt. Kinneer.]*

( 200 )

morning of the 28th; to all which he answered in the affirmative.

Question by Capt. Boteler. Was the log hove from three o'clock in the afternoon of the 27th to four o'clock in the morning of the 28th?

A. I did not see it.

*Cross-Examined.*

Q. Did the Formidable wear the second time by signal?

A. I did not see the Victory until after, therefore I don't know.

Q. Did you, when you passed the Victory, see the signal for line a-battle flying?

A. No; not until the Victory went under the Formidable's stern.

Q. How did you observe the Victory encrease her distance from the Formidable?

A. I observed in the evening she was farther off than she was at three o'clock.

Q. Was she farther at four o'clock?

A. I did not take notice.

Q. Did you ever set the Victory, by compass, that afternoon?

A. No.

Q. Did the Formidable unbend any of her sails that afternoon, in order to bend her's?

A. I believe the fore and mizen topfails were shifted about four o'clock.

Q. Do you remember when the fore topfail was unbent, within an hour or two?

A. No, but I believe the fore and mizen topfail were set before half past eight o'clock.

Q. Do you know if they were set together?

A. I do not.

Q. You really do not?

A. I

A. I do not.

Q. Was there any fore topsail to the yard at half past seven o'clock ?

A. I cannot tell.

Q. Was there any at half past six o'clock ?

A. I don't know.

Q. Was there any at half past five o'clock ?

A. I cannot tell.

Q. Was there at half past four o'clock ?

A. I do not know.

Q. When did you first see the signal for ships to bear into the Admiral's wake ?

A. I believe about seven o'clock.

Q. Did you not see it sooner ?

A. I did not see it until the pennants were let fly.

Q. How long was you on the poop employed ?

A. I was from about three o'clock, most part of the afternoon, there or thereabouts.

Q. The log was never hove during the whole time you was there ?

A. I did not see it.

Q. There was no want of seamen in the Formidable, to expedite business, was there ?

A. She was manned as other ships are in general, seamen, landsinen, and ordinary men.

Q. Then she was but indifferently manned ?

A. Nothing remarkable either way.

Q. Were they soberly and orderly that afternoon, or were any drunk ?

A. I believe soberly and orderly, in general ; there might be one or two drunk.

Q. Are you sure it was seven o'clock when the Fox came to you ?

A. I have not spoken to time with any certainty.

Q. Do you think it was half past six o'clock ?

A. I believe it was later.

Admiral



*Capt. Goodhall.]*

( 202 )

Admiral Keppel. I won't trouble him any more.

Question by Capt. Duncan. What sail did you wear the Formidable twice under ?

A. I believe the foresail and topsail only.

Adjourned to Monday the 25th.

*January 25.*

Captain GOODHALL, of the *Defiance*, called in and sworn.

Questioned by Sir Hugh Palliser.

Q. When did you first see the French fleet on the 27th of July ?

A. About five o'clock.

Q. Did they appear in a line of battle ?

A. No.

Q. With what part of the French fleet did you engage ?

A. The headmost but two of the center.

Q. When you began the engagement, was any of our ships near you so as to support each other ?

A. No ; I saw no ship near me engaged, except the *Prince George*, which I drew up to soon after the engagement.

Q. Then you joined the centre division ?

A. Certainly, she was the second ship in line of battle from the *Victory*.

Q. Your ship was one of the Vice-Admiral of the Blue ?

A. Yes.

Q. During the engagement, did you fire over any of our ships, or they over you ?

A. No.

Q. When you passed the rear of the enemy where was you with respect to the *Victory* ?

A. She was on our lee-bow.

Q. What

Q. What distance did the Victory stand before she passed the rear of the enemy before she wore?

A. About half a mile from the lee-bow of the Defiance, and wore soon after.

Q. What distance was the Defiance from the rear of the enemy?

A. Three or four cables length. I am speaking of the time when I saw the Victory when I came out of action.

Q. Speak to the time when the Admiral did wear and lay his head to the enemy?

A. About a mile.

Q. Do you know when the signal for battle was hauled down?

A. About two o'clock or quarter after.

Q. Was that before or after the Victory wore?

A. After.

Q. Did you see any of the ships of the English fleet at that time dismasted?

A. No.

Q. Did you see the Admiral wear a second time?

A. Yes.

Q. Where was the Vice of the Red and his division?

A. To windward of the rest of the fleet.

Q. Had he wore and stood to the northward before the Victory and center division?

A. I think so.

Q. Were they then more advanced to the enemy?

A. They appeared to me to be so.

Q. When did you first take notice of the Vice of the Blue, after you ceased firing?

A. When he was near the Victory; I think I saw him edge down towards the Victory.

Q. Do you know of any reason why the Admiral and the rest of the fleet might not have wore much nearer than a mile to the enemy?

A. I

A. I do not.

Q. If they had done so, do you know of any reason why the engagement might not have continued, or immediately renewed as soon as the Vice of the Blue and his ships came out of action, the Vice of the Red being at that time to windward of the Admiral?

A. The separation of several of the ships, and the disabled state of many others, was I think the reason why the Admiral did not, as he could not collect a sufficient number of ships.

Q. Did you know of the disabled state of any ships but your own?

A. There appeared many much disabled in their sails and rigging.

Q. From the brisk fire of our ships, had you not reason to suppose the enemy suffered equal to ours?

A. It did not appear so much in their sails and rigging, but I am persuaded much more in their hulls and loss of men.

Q. As the ships were scattered and separated much when they came out of the engagement, would that have been the case if they had been formed in a line of battle, by which a Captain cannot quit his place according to the Fighting Instructions?

A. They were separated, but not scattered or divided so much as not to be collected in a certain time; they would have been more connected if the two fleets had engaged in a regular line of battle, paralled to each other.

President. Do you believe, Sir, the action would have been brought on that day if you had formed a regular line of battle, in the position the fleets were then in?

A. No; the Admiral had always offered them battle, and it lay in their breast whether they would bear down. Had he kept a line of battle that morn-  
ing

ing they could not have been brought to an engagement.

Q. Did not the French fleet edge down and make the attack, was that an indication of their not being willing to engage?

A. They partly edged down, and were partly met with by the English.

President. Did they edge down before the engagement?

A. I cannot positively answer, but I do not think their van did edge down.

Q. Did it appear to you by the enemy's fleet on the evening of the 27th, forming a new line, that they meant to renew the engagement?

A. It indicated a disposition to receive an attack, but they had it in their power by making more sail to have made one.

Q. You have said after the engagement, several of our ships appeared to have suffered in their sails and rigging, mention how many?

A. To the best of my recollection, I saw ten or twelve myself with my own eyes?

Q. Were they not in a condition to attack an enemy, whom you say shewed a disposition to receive them?

A. Towards the close of the day, I believe they were.

Q. Was your ship in that condition, Sir, as not to continue in action if you had lain a-long-side an enemy?

A. She was ready for action in about thirty or forty minutes.

Q. Did you see the Vice Admiral of the Red and his division bear down in the Admiral's wake that afternoon?

D d

A. I



A. I think I saw him pass under the lee of the Vice of the Blue, and to windward of the Admiral.

Q. Was the Vice of the Red ordered to take the station of the Vice of the Blue, a-stern of the Admiral?

A. No.

Q. Was the Vice of the Blue the last ship that came out of the engagement?

A. Yes.

Q. Was not the ships you saw disabled, chiefly of that division?

A. Some of that, some of others, I could not suppose they were all of one division.

Q. by Admiral Montagu. How many of the Vice of the Blue did you see disabled?

A. I did not at that time make any particular notice what divisions they belonged to.

Q. Did you observe what sail the Victory carried that afternoon, when she stood to the southward?

A. At first, fore-sail and top-sail, soon after fore-sail only. I cannot speak to every alteration.

Q. What part of the French fleet was in sight the next morning?

A. Three sail of ships, the nearest about a mile and a half, or two mile, a-stern of the Defiance, and were taken for French men of war, but the body of the fleet was not seen from the Defiance; I think the nearest appeared a line of battle ship, the others appeared smaller.

Q. Were they chased by us?

A. I believe they were by some ships for a short time.

Q. Did those ships that chased set all their sails?

A. I cannot speak to that.

Q. Was there any signal for leaving off chase?

A. I don't recollect.

Q. Were

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Q. Were they nearer to any other part of the British fleet?

A. They might be some trifle nearer to the ships that were-aftern in the line.

Q. Suppose the ten or twelve ships that appeared to you to be disabled, was there not eighteen or twenty that were not so?

A. The ships that suffered in their sails and rigging, drew my attention most, but I suppose there might be some.

Q. Were the frigates disabled?

A. At the time I engaged, or during the whole of the afternoon, I do not recollect seeing any frigates at all.

Sir Hugh Palliser. I will not trouble the witness any farther.

Admiral Montagu. Sir, you have heard the charge, where the first says, he negligently performed the duty imposed on him; the third says, he did not do all in his power to take, burn, sink, and destroy the enemy; the fourth says, his conduct had the appearance of flight, and thereby gave the enemy reason to boast of a victory; the fifth, of tarnishing the honour of the British fleet.

Now Sir, acquaint the court if you know of any act of Admiral Keppel, on either the 27th or 28th, that justifies these charges. And at the same time recollect, I do not ask your opinion no farther than came within your own knowledge.

A. No man can have more esteem or respect for Admiral Keppel than I have; I think him highly valuable as an-officer, but I must defer answering that question, as it is judging upon my own evidence. The Court must form their opinion agreeable to my evidence.

Admiral Montagu. Sir, I have not asked you to judge, I sit here as one of the persons to judge and try Admiral Keppel. If he has been guilty I wish you to inform the court of it, in order to come at the facts. I ask you, as Captain of one of his majesty's ships on those days, whether you saw any act of Admiral Keppel that makes him guilty of the charges.

A. As a witness I have further objection, for fear I should hereafter stand in the same predicament by a false and malignant prosecution, and it should be left to the opinions of the evidence to judge, I therefore must defer answering that question.

Admiral Montagu. If every witness that attends here will not give his opinion, it is impossible for us to judge.

Here an altercation between the Court and witness took place, who refused to give any other answer. If he had been asked at first for his opinion, without giving evidence, he would have given it.

*Cross Examination.*

Q. Where was the Defiance on the morning of the 27th.

A. On the lee quarter of the Formidable.

Q. Did you see the signal for ships to chase to windward?

A. I was not upon deck when it was made, my officer afterwards informed me of it.

Q. Do you recollect what sail you was under at that time.

A. Courses and double reefed top-sails.

Q. Did the Defiance make more sail on the signal being thrown out?

A. No.

Q. You came to action you say close a-stern of the Prince George. Were not several ships engaged ahead of the Prince George?

A. The

A. The enemy had fired twelve or fifteen minutes on the Defiance before we returned the fire, after we had given two or three broadsides, and the smoke had cleared up, I observed the Prince George.

A. At that time, was not the Sandwich and other ships of the center division, close up a-stern of the Defiance?

A. I saw none.

Q. What ship's fire did you receive?

A. The second ship from the French Admiral.

Q. How many French ships were there a-stern of the French Admiral in the 100 gun ship?

A. I don't know.

Q. Were there six or seven, eight or nine?

A. There might be.

Q. Did you see more French flag ships than one together?

A. There were two very near together.

Q. Was the French Admiral in the center of his fleet?

A. Yes.

Q. How many ships did you see with the Victory a-head or a-stern in the line, while she was on the starboard tack?

A. Not many.

Q. Do you know there was any, can you name any?

A. If I mistake not, the Foudroyant, the Prince George might be another, I am not certain.

Q. Had you repaired your own damages, so as to be able to come into the line yourself whilst the Victory was standing upon the larboard tack; with the signal for line of battle flying, was you able to get a-head of the Victory yourself?

A. We had wore with our rigging in a disordered state, except what contributed to wearing, but bringing on canvas we got much to windward of the Victory, who was on our lee beam.

Q. At



Q. At what time did you rejoin the Vice Admiral of the Blue, after you came out of action?

A. While the Red division bore away to fetch a-head of the Admiral.

Q. by the President. Do you know on any part of the 27th or 28th of July, that the English fleet ran away from the French fleet, or shewed any appearance that could be so construed?

A. No.

Q. Do you know on any part of the 27th or 28th of July, that the French fleet ran away from the English, or shewed any appearance that could be so construed?

A. On the 28th of July the French fleet ran away and avoided the British fleet.

Admiral Montagu. I beg, as the witness refused to give me answers to my questions, that the charge to Sir Thomas Pye to try the prisoner may be read.

The letter to Sir Thomas Pye was read, and mentioned that the Court was to ask every witness such questions as they might think proper.

Ordered to withdraw.

Lieutenant WALLER, of the Formidable, called in and sworn.

Q. by Sir Hugh Palliser. What distance do you judge the Victory and body of the English fleet were from the rear of the enemy when the Formidable passed the last of the French fleet and ceased firing?

A. I don't recollect seeing the Victory at the time we came out of action.

Q. Did the Formidable immediately after coming out of action wear and lay her head towards the enemy again?

A. Yes.

Q. What

Q. What time did you first take notice of the Admiral and the rest of the fleet?

A. I don't recollect seeing the Admiral until we wore a second time.

Q. When the Formidable wore the second time to stand towards the Victory, was not the signal for battle then hauled down?

A. I don't recollect.

Q. Whilst the Victory and Formidable were standing towards each other, was not the Victory's end on directly towards the Formidable?

A. We were standing on a parallel to each other, nearly on the opposite point of the compass, very little to windward.

Q. Was the signal for line of battle seen until you came close to the Victory?

A. I don't recollect seeing it until we came close.

Q. Whilst the Formidable was standing towards the Victory, did you see any ship between them that appeared to have taken her station in the line of battle a-head of the Admiral?

A. I don't know.

Q. Did the Formidable stand with all the sail she could (trimmed as well as her condition would admit) after the Admiral, and was she in a manageable condition to have taken her station at a cable's length asunder in the line?

A. She did stand with all the sail she could, but I do not think she was in a manageable condition to have taken her station.

Q. Did she steer a proper course to get into her station, as the Admiral was under sail and not lying to?

A. Yes.

Q. Was every thing done on board the Formidable to refit her for attack?

A. Yes.

Q. I

Q. I shall now ground a question upon the former questions and answers.—Now, Sir, whatever signals were made, or messages sent, was it possible for the Formidable to get into her station in the line, unless the Admiral had waited for him?

A. We could not, without the Admiral's waiting for us, and if we had, we could not have kept there.

Q. by the Court. If the Admiral had bore down, and waited for you, should you have been able to renew the attack?

A. It is a question of too much importance for me to judge.

Q. By Sir Hugh Palliser. Do you know if the Admiral did bring to any part of the afternoon for ships to get into their station?

A. I don't know.

Q. Did you observe at any time what sail the Victory was under that afternoon?

A. No.

Q. Upon a presumption that you know the defects of the rigging about the fore-mast, I mean to ground a question; "Was it safe to carry sail upon that mast on a wind, until stays were got up, and the rigging repaired?"

A. I do not know.

Q. Was it not in danger without any sail upon a wind until the damages were repaired?

A. It was the general opinion then.

Q. By Admiral Montagu. How long after the action was it before you went upon the fore-castle to see the damage of the fore-mast and rigging as you was stationed upon the lower deck?

A. I don't recollect I was upon the fore-castle.

Admiral Montagu. Then, Sir, you only speak from hear-say, or, as a seaman, from your knowledge, that if the defect were as stated, it was dangerous?

A. I

A. I only speak from hear-say.

Q. by Sir Hugh Palliser. Do you recollect seeing several ships pennants flying?

A. Yes; but for what ships, or what purpose, I do not know.

Q. Were they repeated on board the Formidable before or after the Fox came to her?

A. I believe before.

Q. Do you remember whether the Fox or Formidable cheered first?

A. I perfectly remember the Fox cheered first.

Q. Where was you then stationed in seeing repairs.

A. At the main rigging.

Q. Did you hear the message delivered from the Captain of the Fox?

A. I heard something, but cannot say what it was.

Q. Although the Formidable was not able to get into her station, do you not think she was able to go down before the wind, and engaged an enemy, if the Admiral had done so?

A. We were capable of going to leeward most certainly.

Admiral Montagu. You might to be sure go leeward, if you had not an anchor a-stern to keep you back.

*Cross examined.*

Q. Did you, in the afternoon, at any one time, set the Victory by compass?

A. No.

Q. Did you, at any one time in the afternoon, see the signal for line of battle on board the Victory, a blue flag at the mizen-peak, after the Victory wore with her to the southward?

A. I do not recollect to have attended any signals on board the Victory whilst she was on the starboard tack.

E c

Q. Then

A. I



Q. Then I am to understand you was only attentive to knotting and splicing the rigging?

A. That engrossed the greatest part of my attention.

Q. Was you assisted by the men, like good seamen, all the time?

A. I think I was.

Q. Had they any wine or grog given them to cheer them up?

A. Not to my knowledge.

Q. What time was the fore-top sail unbent on board the *Formidable*?

A. I cannot say to time.

Q. Do you know within two hours?

A. I cannot say.

Ordered to withdraw.

Lieutenant HILL, of the *Formidable*, was called in and sworn.

Questioned by Sir Hugh Palliser, the same as Lieutenant Waller, and gave nearly the same answers.

Q. by Captain Duncan. Was not your situation such that the signal for line of battle might be flying on board the *Victory* and you not see it?

A. It was.

Q. by Sir Hugh Palliser. If the repeating frigate was near to the *Victory*, and steering the same course, was it not also possible not to see her signals?

A. Yes.

Q. Was not the boatswain killed in the action, and the loss of him severely felt in repairing the damages, and was you not deprived of three of the lieutenants for that purpose, two of them being sick, and one wounded?

A. Yes, the boatswain was killed, and the lieutenants were as you mentioned.

A. As

*Q.* As it seems to be wished that the time was known when the fore-top sail was unbent, can you tell us what time it, was set, or when the new one was set?

*A.* I don't know when the fore-top-sail was set; the new one was set eight o'clock.

*Q.* Did you observe any tardiness, disorder, or confusion in the men, in not doing all in their power to get their rigging repaired?

*A.* I saw none.

*Q.* Was some wine given to them to encourage and refresh them, and was it before, or after the repairs, and at what time?

*A.* The sails were set, half a pint of wine was given to each man, I judge about nine or ten o'clock at night.

*Q.* Did that occasion any interruption or retardment to the ship, or was it of use to encourage the men?

*A.* I think it encouraged them, and by no means retarded.

Sir Hugh Palliser. I have done.

Admiral Arbuthnot. You have said your fore-top-sail was not set until eight o'clock, was your ship, or any other ship, or do you think you would be authorised to go down and seek an action, without a fore top-sail to your ship, especially so late in an evening.

*A.* She might have gone down on a wind.

*Q.* Where was you when the cheers were exchanged between the Formidable and Fox.

*Cross-Examined.*

*Q.* Did you ever set the Victory by compass?

*A.* No,

Q. But, as a seaman, you can tell whether the Victory was upon the lee-bow of the Formidable, one, two, or three points, without setting her.

A. I am sure I could tell.—At what time?

Q. From three to five?

A. I cannot tell.

Q. Well, Sir, then at about an hour before the Fox chased her?

A. If I can judge of time, about a point, or one and a half upon her lee-bow.

Q. At the latest hour of the day how did the Victory bear with respect to the Formidable?

A. I cannot say.

Q. You say the Formidable returned the cheer to the Fox, how many did she return?

A. I cannot say. I think one.

Ordered to withdraw.

Sir JOHN LOCKHART ROSS, of the Shrewsbury,  
called in and sworn.

Q. by Sir H. Palliser. At what time did you first see the French fleet on the morning of the 27th?

A. At four o'clock in the morning, standing to the N. W.

Q. How long did they continue upon that tack?

A. They began to wear about eight o'clock in the morning.

Q. Did the van or rear wear first?

A. The van.

Q. Did they wear successively in each other's wakes?

A. They did.

Q. How long did they stand on that tack after they had all wore?

A. At half past nine o'clock I lost sight of them, it being squally and thick to the S. W.

Q. After

Q. After they had wore, did they appear to you to be in a line of battle?

A. After they had all wore, they appeared to be in a line of battle.

Q. At what distance might they be from you, when they wore at eight o'clock?

A. I cannot say at that time, but at four o'clock, I judged the center of them to be eight or nine miles to windward from me.

Q. When did they change their tack again?

A. At ten o'clock. When it cleared up, I saw several before the wind. The whole French fleet hauled their wind to the N. W.

Q. Then they wore again to come to the N. W.

A. Certainly.

Q. After their heads were to the N. W. did they then appear to you to be in a line?

A. More irregular than I had perceived them for three days before.

Q. I think you was in one of the ships that the French first fired in; did the French edge down upon you, and begin the fire?

A. I cannot recollect whether they did or not. I was too attentive to my own ship to mind that.

Q. After they had wore a second time, did they not attack our fleet?

A. They fired two shot before their colours were hoisted.

Q. Do you imagine their wearing twice, when they might have tacked, to be an indication of their wishing to come to action or not?

A. When I lost sight of them in the squall, I told my officers, if the squall continued much longer, we should see them to leeward of us, judging from their former conduct, they intended to push for Brest. When I saw six before wind at one time, I ordered them



them to rigg out the studding-sail booms, and bear away two points, though it was not executed, for I had no sooner ordered it, than they directly hauled their wind to the N. W.

Q. As they hauled their wind to the N. W. had you kept your ship as she was, could you have fetched their van ?

A. I never bore away.

Q. Was your ship to windward of the division ?

A. I was the headmost ship, I cannot say whether I was to windward.

Q. Did you chace by signal that morning ?

A. Yes, at a quarter after five our signal was made, we being the weathernmost ship of the fleet at that time.

Q. When the French was upon the larboard tack and fired at you, did they seem to keep their wind ?

A. They were close hauled, I thought, upon a wind.

Q. Did they seem so after they passed our fleet, or did they appear to edge away ?

A. If you mean while I was engaged, I answer, I was so much engaged, and in smoke, I could not observe.

Q. After the Red division passed the rear of the enemy, did not you wear and stand for the enemy again before any other ship of your division ?

A. I did.

Q. Do you recollect declaring at the time, that you intended attacking the rear-most ship, if you could get at her ?

A. I don't recollect I ever did ; as soon as I wore I saw I should throw myself and the ships that were standing towards me into the greatest confusion, so I wore back again immediately.

Q. What was your intention when you first wore ?

A. My

A. My first intention was to attack the enemy, until I saw the confusion I should make in the ships; I wore almost momentarily back again.

Q. Do you recollect after the Red division was out of the engagement, taking notice of the Vice of the Blue, while he remained engaged?

A. I do recollect the Formidable in particular, but my remark was, that the Blue division and several other ships were engaged with the French fleet until near forty minutes past one; the signal for battle was, after they had passed the French fleet, hauled down, and repeated by the Vice-Admirals of the Red and Blue division.

Q. Did you take notice of the Formidable laying her head to the enemy, after she came out of action.

A. I did not; my reason is, that at half past twelve, the Vice-Admiral of the Red made the signal to tack, we then tacked, stood after the French fleet, and my attention was taken up with my own ship.

Q. When the last of our ships came out of action, how was the Vice of the Red and his division situated in respect to the rear of the enemy?

A. When the Red squadron tacked and stood to the N. the sternmost of the French fleet were then a-head, and on our lee-bow, we were close to the wind.

Q. After your division tacked, did you not make sail, and draw up with the rear of the enemy?

A. We were under sail, what it was I do not recollect.

Q. Did not the Red division tack before the center wore?

A. They did.

Q. As you tacked before they wore, was not your division considerably nearer to the enemy than the center divisions?

A. We

A. We were nearer, the distance I cannot ascertain.

Q. What distance was the Admiral and his division from the enemy when they wore?

A. I cannot say.

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January 26.

*Continuation of the Evidence of Sir JOHN LOCKHART ROSS.*

Q. by Sir H. Palliser. What distance did the Red division stand from the enemy before they tacked?

A. I cannot say.

Q. Who first made the signal for battle, the Vice-Admiral of the Red, or the Commander in Chief?

A. At two P. M. the signal to engage was made, but I did not see the signal until I passed the line of fire of the enemy.

Q. Do you judge that the flag officer commanding a division, has a right to make a signal contrary to the Commander in Chief, such as calling ships from chasing?

A. I should imagine not.

Q. You said the Red division was to windward of the rear of the enemy after they had tacked.—Now, if the Admiral, when he was standing towards the enemy had continued the signal of battle, whether the Red division, from the situation they were in, could not have bore down and attacked the enemy?

A. As we were to windward, we certainly could have edged down, but the propriety of that measure depends upon the condition the fleet was in at that time.

Q. Was any part of the fleet dismasted at that time?

A. Not that I observed.

Q. Was

Q. Was any part of the Red division disabled to your knowledge at that time?

A. The Shrewsbury was, I cannot answer for other ships, it was impossible for me to see their damages at that time.

Q. Was the Shrewsbury unfit to re-engage immediately?

A. In half an hour she was fit for action.

Q. What was the damages of the Shrewsbury?

A. The main and fore spring stay main tack, top-sail ties, great part of the running rigging, most of the sails shot to pieces, one shot through the main mast; one shot through the rudder head; one through the main cheeks of the rudder; and several others.

Q. From the brisk fire our ships kept up, should you not suppose the enemy were equally damaged?

A. I should imagine so.

Q. Did the enemy appear much damaged in their sails and rigging?

A. I thought not.

Q. Did you see the enemy when they formed a new line, stand with their heads towards the British fleet?

A. I did observe them, the French fleet wore about three quarters past three o'clock with their heads to the Southward.

Q. If the whole of the British fleet had wore immediately after passing the rear of the enemy's line, instead of standing to a distance, might not the engagement have been directly renewed, and the French prevented from forming a new line—whether the British fleet were in condition or not is out of the question?

A. I think it must depend much upon the condition of the fleet.

Q. by Admiral Arbuthnot. I think you said yesterday, you wore and stood to the French fleet, in order to renew the action immediately after you passed their

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line,

Was



line, but judged it proper to wear back immediately, as you saw it would throw our fleet into the greatest confusion?

A. I did, I wore back instantaneously.

Q. by Admiral Montagu. As most of the questions that are asked are suppositions and opinions; I beg to know if the British fleet, when they came out of action, had received little or no damage, whether you think Admiral Keppel would have renewed the action immediately?

A. Most certainly he would.

Q. by Sir H. Palliser. The time you mention that the ships would have been in confusion by the Shrewsbury's wearing, do you speak of the ships of your own division?

A. No. I mean if the British ships that came out of action, had wore immediately, and stood to the enemy, they would have thrown themselves, and the rest of the English ships that were coming up, into the greatest confusion.

Q. When ships of the van tack before ships a-stern of them, do not the leading ships weather those that follow them, as ships tacking in the van greatly keep that wind?

A. They certainly do, but in the present case there were several objects to be considered. Here was an enemy a-stern, therefore our tacking would most assuredly have caused much confusion to our own ships so a-stern.

Q. by Admiral Montagu. If ships of the van had attempted to tack, and missed stays, would not that put them a-stern in great confusion (I only ask for information, as several of these questions seem necessary for the passing of a lieutenant?)

A. They certainly would.

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Q. by Sir H. Palliser. Yesterday you placed the Red division to windward of the center division, and laying up to windward of the rear of the enemy, that was the situation upon which I grounded my question, but I shall drop it.

Q. Did the Red division bear down that afternoon into the Admiral's wake, while the signal for line of battle was flying, and the fleet on the starboard tack?

A. At twenty minutes past three, the Admiral made a signal to wear; at half past three a signal to bear down on his wake; the French fleet some minutes before that wore with their heads to the S. W. I will proceed a little farther, to save you the trouble of asking questions; the French stood in a line of battle, the Admiral made a signal to form a line of battle a-head, a cable's length asunder, which was obeyed by the Red division.

Q. Did not the Red division first go down a-stern of the Admiral before you went a-head of him?

A. The Vice of the Red made a signal to lead upon that tack, which I found was in consequence of orders from Admiral Keppel.

Admiral Keppel. If it will be of satisfaction to the prosecutor or court, I will bring proof that I did send those orders to Sir R. Harland.

Q. by Sir H. Palliser. During the night of the 27th, did you in the Shrewsbury make any observations of the French fleet?

A. During the whole of the night we were under easy sail in a line of battle, a cable's length a-stern of Sir R. Harland, the French being to leeward of us.

Q. Did you observe the French make any signals during that night?

A. I saw none myself, but was told about eleven o'clock some rockets were seen.

Q. Did the Shrewsbury observe the French bear away in the night ?

A. No.

Q. Do you remember what time you lost sight of them in the night ?

A. I do not.

Q. How many were in sight in the morning ?

A. At four o'clock in the morning I saw three sail steering S. E. by E. about five or six miles distance, bearing away with all the sail they could crowd.

Q. Were there no more of the French fleet seen from on board you ?

A. At five o'clock one of the lieutenants from the main top mast head saw nine or ten sail bearing S. E. and by E. about six or seven leagues off, but could not at that distance discover what country they were.

Q. Was any signal made to the Admiral from your division of what you had seen ?

A. No. As the Admiral had made signals for several ships to chase, I made none, but part of the Red division had set top gallant sails.

Sir Hugh Palliser. I have done with the witness.

Question by Admiral Montagu. Did you see the British fleet run away from the French, or have the appearance of flight, and did the French fleet pursue it, and offer it battle on the 27th of July, so as to give the French Admiral a pretence to boast of a victory ?

A. Most assuredly at no period of time did I ever see the British fleet run away, or have the least appearance of it.

Q. Then, Sir, did you see the honour of the British navy tarnished on either the 27th or 28th of July ?

A. I did not in any respect.

Q. In

Q. In the morning of the 28th, when you found the French fleet were gone; did you not look upon it they had ran away from the British fleet?

A. Certainly. I did.

*Cross-examined.*

Question by Admiral Keppel. Could the ships in the close order they were in coming out of action tack clear of each other, without standing on to increase their distance?

A. It was absolutely necessary to stand on.

Q. Was it by the Red division standing on that we were able to get to windward of the French fleet?

A. Certainly it was.

Q. Did I use every means as an officer to come up with the French fleet, and bring them to battle, from the 24th to the 27th of July?

A. You did, by carrying proper sail, both by night and day.

Q. If I had pursued the French fleet in line of battle, would it have been possible to have preserved our nearness to them?

A. You could not.

Q. Was it not in the power of the French fleet, every day from the 24th to the 27th of July to have brought on the action?

A. It certainly was, they being always to windward.

Q. If I had formed my line of battle on the morning of the 27th, do you imagine I could have brought the French fleet to battle that day?

A. No, because had you made the signal for line of battle, and the weather-moſt ships had only bore down on the wake of the leeward-moſt ships, we should have been five leagues to leeward of the center of the French fleet.

Q. At



Q. At the time the French fleet were so near, and the favourable change of wind to us happened, must not the French Admiral have given up some of his rear ships, if he had not risked battle with his center ?

A. Most certainly.

Q. Did it ever appear to you in the afternoon of the 27th, that I had given over my intent of renewing the action if I could in time have formed my line of battle ?

A. Certainly not, for the signal for line of battle was on board the Shrewsbury, flying all night.

Q. You are an officer of long experience in the service, I therefore, Sir, desire you to inform the Court, whether you observed any instance on the 27th or 28th of July, in which I negligently performed my duty, or the trust imposed on me ?

A. I know of none. In every respect the Admiral discharged his duty as far as I can be a judge, becoming a brave and gallant officer.

Ordered to withdraw.

Captain PEYTON of the Cumberland called in and sworn. Charge read.

Question by Sir Hugh Palliser. When did you first see the French fleet on the morning of the 27th of July ?

A. Some time before seven o'clock ; they were standing on the starboard tack with their head to the northward.

Q. Did you see them change their tack ?

A. About eight, or half past eight o'clock, they wore and formed their line, as they wore, on the other tack, leading large.

Q. Did they appear to you to be in a line of battle after they had wore ?

A. Yes, those ships I saw did.

Q. Did

Q. Did the van of the enemy appear to you while on the larboard tack to keep their wind or edge down upon the English fleet?

A. They appeared to me to keep their wind, and their headmost ships to croud sail as much as they could carry.

Q. Did you by the manœuvres they made in tacking and wearing, imagine it an indication to give us battle, or to avoid it?

A. When they wore I had my eye upon them, I then thought their intention was different to what they had shewn the several days before; but when they tacked on the larboard tack, crouded sail and kept the wind close, I then thought they had an inclination to avoid it, and as I had observed for several days before the 27th in the morning that their fleet out-failed ours in a body, it was a confirmation to me that they did not mean to come to battle, thinking they could get off when they thought proper.

Q. Did they croud sail, or did they engage us with their topsails loose?

A. It was not their headmost ships that bore down, but it was one a-stern of them, and I think began firing upon the Monarch, and from thence began the action.

Q. Did they after they edged down, continue to croud sail while going along the British line, or did they shorten sail?

A. After the firing began, which was very unexpected to me; some of their ships brought to, others continued under such sail as kept them in their line, but no appearance of crouding sail.

Q. Was the signal for engaging first made on board the Queen or the Victory?

A. I don't know.

Q. Whilst

Did

Q. Whilst the Red division was passing the enemy, were you a-head or a-stern of the Queen?

A. I was on her weather quarter.

Q. Was you obstructed in your fire by other ships coming in your way, or was you in the way of others?

A. The Monarch was before the Cumberland's weather-beam, but no obstruction to her firing, the enemy passing a-stern of the Monarch presented them to us, and as they appeared we fired. I know of no ships of ours firing over the Cumberland.

Q. After the Red division passed the rear of the enemy, when the division tacked, did they not look up to windward of the rear of the enemy?

A. Yes, I cannot say to the whole division; we followed very close to the Queen.

Q. Do you know that the whole division did not tack and stand the same way with their Admiral?

A. I don't know they did not, I believe they did. After we had tacked we passed the Victory and cheered her.

Q. From the situation of the van and center divisions of our fleet, had the signal for line of battle been flying, and we had bore down on the enemy, did any thing appear to you at that time against renewing the attack; I mean when you was on the star-board tack within two gun shot?

A. This is matter of opinion merely.

Court. You may give your opinion if you please.

A. The latter part of my oath says, I am to speak nothing but the truth, therefore opinion may be liable to error.

Q. Did you take notice of the last of the British fleet when they came out of action, or did you take notice of the Vice-Admiral of the Blue, when he came out?

A. I

A. I saw the Vice of the Blue, to leeward of the van division, and presented to the enemy, when they were drawing upon their starboard tack.

President. Sir John Lockart Ross has sent me a note, wishing to explain himself, therefore I move he may be called in.

Capt. Peyton withdrew.

Sir JOHN LOCKHART ROSS called in.

Note read, which was as follows:—A question put to me from Admiral Keppel was—"In the afternoon of the 27th of July, did you perceive any intention in me not to renew the attack, &c. &c?" I answered certainly not, for the signal for battle was flying on board the Shrewsbury all night. I mean to say that the Shrewsbury was on her station all night.

Question from Court, Was your colours hoisted all night?

A. They were.

Withdrew.

Captain PEYTON called in again.

Question by Sir H. Palliser. Did you see the French fleet forming a new line?

A. Yes.

Q. Have you any reason to think that the French did not suffer in proportion to the English during the engagement?

A. They did not appear to me to have suffered so much in their masts and yards as ours had. There was one ship of theirs more disabled in her masts and yards than any of ours.

Q. Did you observe any dismasted on either side?

A. No.

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Q. Did



Q. Did you know at that time of any of the Red division being disabled?

A. The Monarch had her fore top-sail yard carried away. I do not recollect any particulars of other ships.

Q. Do you remember seeing the Admiral when he laid his head to the southward again?

A. No.

Q. When did you first take notice of him in that situation?

A. It must have been when we were following him in the van division, but there is nothing strikes me particularly.

Q. When the French began to form a new line with their heads to the southward, was not that standing towards the British fleet?

A. Yes.

Q. Did it appear to you, by the enemy standing towards the British fleet, that they shewed a disposition to renew or avoid an engagement?

A. To renew it.

Sir Hugh Palliser. I am going to ask you a question, which is mere matter of opinion?

A. I must beg leave to decline giving any opinion, I wish only to speak to facts.

Sir Hugh Palliser. Did the Red division bear down into the Admiral's wake that afternoon?

A. They did bear down by signal, but I cannot exactly say into the Admiral's wake. I think they bore down and took their station a-head upon the starboard tack.

Q. Do you recollect any notice being taken of the French fleet during the night of the 27th?

A. Their lights were seen and they fired some rockets about one o'clock.

Q. Did you perceive them bear away in the night?

A. No.

A. No.

Q. How many were in sight in the morning?

A. Three.

Q. Do you know of any signal being made of seeing a greater number?

A. Yes, by the Queen and Monarch, the usual signal.

Court. What was the signal?

A. The top gallant sheets flying, and the yard hoisted up.

Court. Do you recollect if it was a signal for a fleet, or particular number of ships?

A. I don't know.

Court read the 13th article for seeing strange ships by day, which says, the ship seeing strange ships is to hoist her top-gallant sails, and keep hoisting and lowering them as often as the number of ships she sees, and is to lay her head towards them as a signal for the Admiral, &c. &c.

Sir Hugh Palliser. Were those three ships chased?

A. Yes, some little time, I cannot say how long.

Q. What sort of wind and weather?

A. Moderate, and I think the wind to the N. of the W.

Q. With little wind, and moderate weather, do you consider Ushant as a lee shore, dangerous to approach, being summer time, and short nights?

A. The question answers itself. In moderate weather there can be no danger.

Admiral Montagu. I do not ask this as a matter of opinion, as you say you will not answer in matters of opinion; but I ask you, whether you saw the British fleet run away from the French fleet, or have the appearance of flight? or did you see the French offer it battle, so as to give the French a pretence to claim a victory?

*Capt. Peyton.]*

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A. Here is too many questions in one.

Q. Did you see the British fleet run away?

A. No.

Sir Hugh Palliser. They are not words of the charge.

Admiral Montagu. I think the charge says, "the French said the English ran away."

Admiral Keppel. The prosecutor has fifty times asked whether the Victory did not stand away with much sail, that is, tantamount, the same thing.

Admiral Montagu. Did you see the British fleet have the appearance of a flight?

A. No.

Q. Did you see the French Admiral pursue it with his fleet, and offer it battle?

A. The French Admiral did follow it, and offer battle.

Q. Did you see the honour of the British navy tarnished on the 27th or 28th of July?

A. No, I did not, by any means in the world.

Q. As you saw the French offer us battle, did you see the French fleet on the morning of the 28th, or were they ran away?

A. Yes, they were ran away. I did not see them that morning.

Admiral Roddam. As you say they offered us battle when they formed upon the starboard tack, if they had intended that, would they not have fetched within pistol shot of the British fleet?

A. I cannot say how near they would fetch. I wish to explain what I mean by offering battle, they ranged to leeward of the British fleet; at such a distance together as to give the British an opportunity of attacking, if they thought proper.

Q. Please to give some account of the damages of your ship?

A. One

A. One shot through the bowsprit, the rigging and sails were terribly cut.

*Cross-Examined.*

Q. At the time you say they offered us battle, whether the English Admiral had then been able to form his line ?

A. The line was not formed until late in the evening.

Q. Had not the signal for the line been flying the whole of the afternoon, both before and after standing on the starboard tack ?

A. Yes, from two o'clock.

Q. Did it ever appear that I had given over my intention of renewing the attack, if I could have formed my line in time to have done it ?

A. As to intentions, I could form no judgment ; but from the disposition of the ships, and their movements, there was full endeavours to form the line all the afternoon, as well as disabled ships would allow.

Q. Did I use every means as an officer to get up with, and bring the French to battle from the 24th to the 27th of July ?

A. If the Admiral says did he not use the means, I answer no ; as to the other part of the question I cannot answer for things I did not see.

Q. If I had pursued in a line of battle would it have been possible to have kept so near to them ?

A. I cannot say.

Q. Was it not in the power of the French on the preceding days to have brought on an action with the English ?

A. Some part of the time there was too much wind for either to engage, but as they were to windward they could bring us to action when they liked.

Q. When



Q. When the French fleet were on the starboard tack, at about eight or nine o'clock, as you have described, did they not keep their wind, and carry their usual press of sail from the English fleet?

A. They kept large.

Q. What number of ships of the Red division were with their Admiral when he tacked in the rear of the enemy, after having passed them?

A. I think they were all there: I think the Monarch seemed the most disabled, I am not sure of the Monarch.

Q. Was the Duke there?

A. I cannot say—I did not see her.

Q. Do you recollect what time it was when she cheered the Admiral in passing?

A. I think it was between one and two o'clock.

Q. What tack was the Admiral on?

A. I think the starboard, we were crossing each other.

Q. Had the Admiral the signal up to wear at that time?

A. I think not.

Q. Does it appear upon your minutes?

A. I have no minute of it.

Q. When the French was to leeward within two gun shot, as has been mentioned; where was the Vice-Admiral of the Blue?

A. I cannot say.

Q. When the French formed a new line on the starboard tack, could they not have come up by making sail?

A. If they had made sail, they certainly could.

Q. With crippled ships that have been in action, is it safe to go down on a lee-shore and an enemy's coast, trusting to find good weather when you came there; I mean by a lee-shore, when the wind blows upon the  
land,

land, so that you may be entangled in sight of an enemy's coast, where the wind is fair to carry the enemy into port ?

A. I don't know we were near a shore.

Q. The question is, can crippled ships go near the land with safety ?

A. It seem to be matter of opinion, and I have declined given answers before.

Q. What distance was you from land ?

A. I have not my books, therefore cannot answer.

Q. Then you do not know how far you was from land ?

A. No.

President. Did you imagine at that time, the 28th, the French fleet to be at such a distance, as you could have come up with them, before they got into port ?

A. I have observed, in the former part of my evidence, that the French sailed better in a body than we did, therefore especially as ours were more damaged in the rigging than theirs, there was less likelihood.

Q. Suppose they had come up with them, was there not danger to the crippled ships on a lee shore ?

A. Certainly.

Q. How long did the French fleet appear to you to offer the English battle ?

A. Great part of the afternoon.

Admiral Montagu. Had you been in the situation the French fleet were in on the days previous to the 27th, commanding a squadron of British ships, and an enemy in the situation the British fleet was in, would you have hesitated a moment, as a British officer, to have gone down and engaged them ?

A. It is, I imagine, as I have said before, mere matter of opinion. If the two fleets could be brought to engage, it would certainly have been my duty to have done it.

Withdrew.

January

January 27.

Captain SUTTON, of the *Proserpine* Frigate,  
*called in and sworn.*

Q. by Sir H. Palliser, Was you stationed the 23d of July to watch the French fleet, and what instructions did you receive from the Admiral?

A. I was.

Admiral Keppel, If it will be of any service I acknowledge that I did appoint him, and will likewise tell you all my orders, as I am not ashamed of any of them. But if the meaning of any of those questions are prejudicial to me, I certainly may object to them, as the charge is only to the 27th and 28th. You can have ~~but one~~ question to ask him, which is, " Was the wind fair on the 23d for the French fleet to go into Brest at night?" I answer, it was, and therefore will save you, the Court, and the witness the trouble.

Q. by Sir H. Palliser. Did you receive any orders in the afternoon of the 27th from the Admiral to carry any message?

A. I did, about two or three o'clock; it was to desire Sir Robert Harland to keep the position he was in, and to lead on the same tack.

Q. What was the next?—It was given at the same time before I went from the *Victory*. It was to form a-stern of the Admiral. I only put the last in execution.

Q. Had you any other order or message from the Admiral that afternoon?

A. No.

Q. At what time did you deliver your message to the Queen?

A. Between two and three o'clock.

Q. Where was the Red division at that time with respect to the rear of the enemy?

A. A few

A. A few of them to windward.

Q. What did the division do in consequence of the message?

A. They were bearing down when I hailed the Queen.

Q. Did they form agreeable to the message?

A. They did, I think.

Q. Was that the station of the Vice of the Red or Blue?

A. The station of the Vice of the Blue.

Q. by Admiral Keppel. When you first came on board the Victory, did not I give you orders for Sir Robert Harland to lead upon the larboard tack? Was the Victory then on the larboard tack?

A. You did, and she was on that tack.

Q. Before you went from on board the Victory in consequence of my orders, did I not wear to the southward?

A. You gave me the orders on the larboard tack, and as I was going away you wore immediately.

Withdrew.

Right Hon. Lord MULGRAVE, of the *Courageux*, called in and sworn.

Q. by Sir H. Palliser. When did you first see the French fleet on the morning of the 27th of July?

A. I don't know as to time.

Q. Which way were they standing when you did see them?

A. I don't recollect; what I mean by saying I don't recollect is, that I would wish only to speak to things I am certain of, and beg leave to mention that my attention was chiefly taken up with my own ship, and watching the signals of the Admiral.

Q. Did you observe the French fleet tack or wear, and which tack was they on in the morning of the 27th?

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A. The weather was hazy, and the French fleet was at a distance too great for me to speak with the accuracy I could wish. I did see them.

Q. Do you recollect seeing them at that time in a line?

A. They appeared to me to be in a line, but at the distance they were at I cannot be certain as to its being a regular line, as from different points of view ships may appear in a line when not so, especially such weather as it was that morning.

Q. What part of the French fleet did you engage, and at what time?

A. I cannot be accurate to the time, but am certain it was several ships a-head of the French Admiral. I was fired at by many of the French ships before I came near their Admiral.

Q. Did they edge down upon our fleet as they engaged?

A. I think they did; from the situation I was in it appeared so.

Q. by the President. Do you recollect whether they edged down before the action?

A. I was more attentive to the English Admiral, from whom I was to take my instructions, than in observing them; I cannot say.

Q. by Sir H. Palliser. When you was in the engagement, I think you was closer than any other ship; did it come within your observation that the French engaged under more or less sail than the British fleet?

A. I wish not to be involved in giving my opinion on any subject, I could wish only to speak to what I saw and what relates to the action, and not to the introductory part of that question. Some part of the French fleet carried much sail, others less, which must always be the case where fleets keep company together.

Q. Did

Q. Did you observe any of them carry more than their topsails and forefails, and was not some of their topsails lowered as you ranged along them?

A. I did not observe any of them with their topsails lowered. I cannot speak positively to their carrying only topsails and forefails, I think some had mainfails.

Q. Do you know what sail the French Admiral carried?

A. At the time I saw him, I was too busily employed to observe.

Q. Do you know who first made the signal for firing, the Admiral, or Vice-Admiral of the Red?

A. I cannot say.

Q. When the Victory passed the sternmost ship of the enemy's line, what situation was your ship in with respect to the Victory?

A. When the Victory passed, I had done the same, and before I was busily employed getting the ship to rights, I was a-head of the Admiral.

Q. Can you speak to the time and distance the Admiral stood beyond the rear of the enemy, before he wore?

A. I don't know the precise time that the Admiral passed them, but he wore very soon after the Admiral made the signal to wear, at P. M. past one o'clock; I had not been able to get my ship to wear then, it was forty minutes past twelve when I passed the enemy's line.

Q. Do you recollect what sail the Victory carried after she passed the enemy's rear?

A. I do not.

Q. Did you take notice of the movement and situation of the Red division?

A. At about one o'clock, the Queen, with the Cumberland, and some others, passed me on the

larboard tack with much sail. I was on the starboard repairing my rigging; the Monarch at that time was laying disabled, with her fore-top-sail-yard down, just to leeward of me.

Q. Did you observe when the signal for battle was hauled down?

A. At forty-one minutes past one o'clock.

Q. Was that after the Admiral wore?

A. After the Admiral had wore; he was on the larboard tack when it was hauled down.

Q. Did you observe when the French took up their line and began to stand to the southward?

A. When they broke line, or began standing to the southward, I don't know, I saw some of them standing that way, but did not see them begin.

Q. What time did you observe them with their heads to the southward?

A. It was at twenty-five minutes past two, when I hauled my wind, and set my sails on the larboard tack.

Q. From the brisk fire kept up by our ships, did your lordship believe the French did not suffer equal to ours?

A. I desire to answer no question of opinion or conjecture.

Q. Did you see any of our ships dismasted?

A. I saw the Foudroyant's mizen-topmast gone, I observed no lower masts gone.

Q. At twenty-five minutes past two, you saw the French standing to the southward, were they then standing towards the British fleet?

A. Some of them were standing towards the disabled part, and I was to leeward of all the disabled ships.

Q. Can you mention what disabled ships the French were standing towards?

A. The

A. The Egmont, Ramilies, Robuste, and Sandwich; the Ramilies was the most to leeward, as I had passed her and hailed her.

Q. Was the Admiral standing towards the enemy at that time?

A. He was.

Q. While the French fleet, or part of them, were standing to the southward, and the British fleet standing to the northward, were they standing towards each other, or wide of each other, or how were they standing?

A. The English fleet was to windward, and I was working up to get in my station, when the French appeared standing to our disabled ships: what makes me think so, was my fear at the time for those disabled ships, and if the signal for the line had not been out, I should have gone to their assistance.

Q. From the situation the two fleets were in, which wore and stood the contrary way first?

A. I could wish to answer these questions, with respect upon what tacks, and not by expressions involve opinion, with my answers: the Admiral was standing upon the larboard tack, the French on the starboard, and at ten minutes past three, our Admiral wore and stood upon the starboard tack.

Q. Did the two fleets continue on these tacks most of the afternoon?

A. Yes, I think they did.

Q. Did you see the Red division come into the Admiral's wake that afternoon?

A. I did not.

Q. When you did get into your station, what observation do you recollect to have made of the French fleet?

A. I cannot speak to time, as they were progressive motions; they only struck me in the gross; about three  
three



three quarters past five, I got into my station, and I think part of the French fleet were forming a line to leeward, another part were a-stern of them, forming likewise about three cables length afunder to leeward of each other. Our Admiral's division was close in a line, a cable's length afunder. After the van were formed, the second ship of the French line was nearly on my beam, for I could see her quarter galleries, though not her broadside.

Q. Did you observe any of the French ships firing on one of our ships that was left a-stern?

A. I did not.

Q. Did you take notice what sail the *Victory* carried while standing to the southward?

A. I did not.

Q. In the night of the 27th, was it observed on board your ship that the French fleet made any signals?

A. We thought we saw some rockets, but I made no minutes of it.—Here Admiral Arbuthnot was suddenly overcome with the heat of the Court, and obliged to retire for some time; on his recovery, the prosecutor continued his questions.

Q. Was it observed on board the *Courageux* when the French fleet bore away in the night?

A. No.

Q. Was there any signal made in the night for our fleet to alter their course?

A. I don't know.

Q. In the morning how many of the French fleet did you see?

A. I saw three strange ships, and I think a signal for a fleet being seen by two of our divisions.

Q. Did you suppose the three ships to be ships of war or line of battle ships?

A. I

A. I formed no judgment about them. They had no colours, and as the ship I commanded was not in a condition to be liable for having her signal thrown out to chace, I cannot say I observed how far they were off, or what course they steered.

Q. Do you recollect how the wind was that morning?

A. I think it was west, and moderate weather, rather hazy; there was a swell.

Q. Can you speak of the latitude of reckoning that day?

A. The 28th at noon, latitude was 48. 16. Ushant bore N. Distance 74 miles.

Q. Was Ushant at that time as the wind and weather was, a dangerous lee shore?

A. It is matter of opinion, and depends upon pilotage, or a knowledge of the coast, which the Court are better judges of than myself.

Admiral Montagu. To your knowledge and observation, did you observe Admiral Keppel on either of those days negligently performing his duty?

A. I hope, as the law protects the Court from divulging their opinions, the Court will allow me the same privilege: I have spoken to facts, to the best of my knowledge, but I must decline, as I have said before, giving my opinion, as men's opinions are liable to error, and I might probably now give an opinion which at another time I might think quite different of. I have ever since the action studiously declined giving my opinion to my most intimate friends; I have always held the opinion of individuals sacred, and if I am forced to it, I shall think myself in a very disagreeable situation.

Admiral Montagu. Your Lordship does not take my meaning right: I do not ask your opinion, I say, did

did you see him negligently performing the duty imposed on him ?

A. I perfectly understood the question, if I understand the language—the term of negligence, implies a crime, and if I can give an answer to that, I must be equal in abilities to the Admiral who commands the fleet: what would be thought criminal in one, may be thought meritorious in another—If the question is again put to me, I must consider myself an injured man; I stand in a predicament that makes it very disagreeable to me to answer it, and I think it very hard to be pressed to it by an individual; I must beg the Court to take it into consideration, and debate within themselves, whether they think by their oath or mine, it ought to be put or answered. I am to give evidence, and they are to judge. I will now inform them, that since I have had the honour to serve under Admiral Keppel, I have, at times in my opinion, thought him wrong, but upon mature deliberation, I have found he was right; therefore will, or can the Court desire me to give my opinion, which I may hereafter alter? I hope they will consider in their minds, whether the opinion of an individual ought to have any influence? My mind is very much agitated with such a question being put to me.

Admiral Montagu. I do think your Lordship has passed a censure upon the Court, which you had no right to do.

Lord Mulgrave. Mr. President, I do not think that an individual has a right to tell me so; if I am to have a reprimand, it ought to come from the Court in a body.

Admiral Montagu. I think the manner in which your Lordship has treated the Court throughout your evidence, has been such, as would not be suffered in any other Court I ever saw. I have, in the course of

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forty-six years service (upwards of thirty of which, I have been either Captain or Admiral) sat at many Court-Martials, but never saw the like; the whole of the trial and proceedings upon it are of a new mode, and I really don't know what to say, or term it.

Admiral Arbuthnot. Upon my word, I think the Court, or any individual of it, has a right to ask the witness any question they think proper. The question was not asking his opinion.

Lord Mulgrave. I am sorry to see any individual warm against me: I am cool, I have not wished to offend, neither am I conscious that I have offended when I begged they would consider their oath: I did it out of respect, not with any disrespect.

The Court withdrew and staid debating about an hour and half. On their return the President said:

“ My Lord,

“ I am directed by the Court to observe to your Lordship, that in the course of the reasons you have thought fit to use in your declining an answer to the question put you by one of the members of the Court, with the approbation of the Court, you have made use of improper language, and that too with a warmth unbecoming the Court to receive. Your treatment of them is such, as they cannot pass over without observing to your Lordship their sense of the impropriety of it; and it is their pleasure, that I acquaint your Lordship of their disapprobation of your Lordship's behaviour to them.”

Lord Mulgrave. I am sorry the Court has misunderstood me, I did not wish to give offence.



January 28.

*The Right Hon. Lord MULGRAVE, called in.*

His Lordship gave an account of the defects of the ship he commanded.

Admiral Keppel. I shall not trouble his Lordship with any one question.

Withdrew.

Sir Hugh Palliser. Mr. President, I shall beg leave to call Lord Sandwich to prove such letters as his Lordship may have received from Admiral Keppel, relative to the engagement: I should not have adopted this mode of proof, had not the Honourable Admiral first set me the precedent, by calling for several letters of mine to his Lordship and the Admiralty Board, and if the Admiral has no objection, I shall call for several private letters of the Admiral's relative to the engagement.

Admiral Keppel. Mr. President, so far from objecting to what the Vice-Admiral has proposed, there is not, I will assure you, a single transaction of my life that I do not wish to have made public.

Court withdrew.

On their return, the Judge Advocate read as follows: The Court have come to the following resolution: That this Court cannot take cognizance of any private letters as evidence.

Sir Hugh Palliser. Mr. President, I shall now call Lord Sandwich to exhibit those letters, likewise some letters of mine; but at the same time I beg leave to be understood; I shall not press for the reading of them, if the Honourable Admiral objects to it: what I mean is, to save his Lordship the trouble of attending twice.

Admiral

Admiral Keppel. Mr. President, if I should find it necessary to call on the Earl of Sandwich, or any of the Admiralty, for the letters of the Vice-Admiral of the Blue, relative to the transaction of the 27th or 28th of July, I will take care to give them due notice. I have no objection to letters being produced; the prosecutor has a right to produce my letters as evidence against me, but I shall object to the letters of the Vice-Admiral being read, as it belongs to me and me alone to make evidence of his letters, and to call, or not to call for them, as I chuse.

The Right Hon. the Earl of SANDWICH.

It appears to me the same, as it does to the Court, that private letters are not proper to produce as evidence, and as I can be called for no other purpose than producing those letters, I imagine the Court have no farther occasion for my attendance. The letters I received, are in my opinion in some parts improper to be read in public, not that I mean in any respect to the transactions of the 27th or 28th of July, but as they contain reasons upon particular subjects, such as the state of the navy, and the conduct of particular officers, &c.

Withdrew.

Right Hon. Lord LONGFORD, of the America,  
called in and sworn.

Q. by Sir Hugh Palliser. When did you first see the French fleet on the morning of the 27th of July?

A. Not until the signal for chase was made.

Q. Upon what tack were they?

A. I think upon the larboard, the same as we were.

Q. When they changed that tack, did they wear?

A. I think they did, I saw some of them.

Q. Did they appear to you to be in a line?

A. They did.

Q. Did you observe when they changed their tack?

A. Yes, a little before the firing began.

Q. What part of the enemy did you begin to engage?

A. We received the fire from the third ship of the enemy's van, and I think engaged the fifth.

Q. Were any of our ships at that time near enough to you to support each other?

A. The Terrible was near upon our weather-bow, the Elizabeth was very near the Victory upon our lee-bow; we were all nearly together.

Q. Do you recollect a signal for six ships of the Vice of the Blue to chace in the morning?

A. I do. I was one.

Q. If the ships of that division had been suffered to remain in their station, might they not have gone into action at the same time the Vice-Admiral of the Blue did, and have supported their flag?

Court. All matters of opinion you may or may not answer, as you think proper.

A. If the wind had continued the same as it did, and the signal had not been made to chace, I do not think that any part of the Vice-Admiral of the Blue's division could have come into action at all.

Q. Well then, could the centre division have come into action any more than the Vice-Admiral of the Blue?

A. I cannot say; the center might certainly have come into action sooner, because they were to windward of the Vice-Admiral of the Blue.

Q. If the signal had been made for the whole of the Vice-Admiral of the Blue to chace instead of a part of it, would it not have had the same consequence as happened?

A. Yes,

A. Yes, if they had been altogether.

Q. How was the *America* situated with respect to the *Victory* in the latter part of the engagement?

A. I do not know, I did not see her.

Q. Was you a-head of the Vice-Admiral of the Blue when you came out of action?

A. I was.

Q. Did you observe when the French fleet began to lay their heads to the southward?

A. I saw them while in that position, but did not see them begin.

Q. Was it before or after the Admiral had laid his head to the southward?

A. I do not recollect.

Q. When you saw some of the French fleet standing to the southward, which way was the Admiral then standing?

A. I said before I do not recollect.

Q. Did the French fleet, after that time, seem to form their line?

A. They appeared so; they led out one ship after another from the body of their fleet, very slowly; they did I think all the afternoon.

Q. Did the British fleet stand to the southward all that afternoon?

A. They formed with their heads to the southward, and stood on that tack all the afternoon.

Q. From the brisk fire that was kept up by our ships, does your Lordship not think that the French ships suffered in proportion to ours?

A. They did not appear to have suffered so much in their sails and rigging, as some of ours did, but I hope they suffered more in their men.

Q. When the French formed a new line with their head to the southward, did it shew an intention to avoid, or to renew the engagement?

A. If



A. If they intended to renew the engagement, they might have fetched in their shot of the British fleet; they shewed a disposition to withstand an attack, but not to engage.

Q. Did you observe the enemy fire at one of our ships that was left a-stern?

A. I did not see it.

Q. How many of the French fleet were in sight the next morning?

A. I think three sail, but I was so far from them, I could not discover whether they were line of battle ships or not.

Sir Hugh Palliser. I have done.

*Cross-examined.*

Q. by Admiral Keppel. When you made sail by signal in the morning of the 27th, do you recollect what sail the Vice-Admiral of the Blue was under?

A. I don't know, I was under double reefed top-sails and courses.

Q. When the signal was made for the six ships of the Vice-Admiral of the Blue's division to chace, did they set all the sail they could?

A. I did not observe.

Q. As your Lordship has heard the charges read, I must desire you will inform the Court in what and how many instances you saw me negligently perform my duty on the 27th or 28th of July?

A. I can state no such instances to the Court, for I know of none.

Withdrew.

Mr. SEWELL, Master of the Worcester, called in,  
Ordered to withdraw.

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Mr. CHRISTIAN, Master of the Ramilies, called in and sworn.

Q. by Sir Hugh Palliser. Have you brought your work of the 27th and 28th of July?

A. I have.

Q. Then let us know the latitude, bearings, and distances of Ushant?

A. Lat. 48. 20. bearings N. 16 deg. E. 52 leagues.

Q. by Court. How comes it there is two leaves torn out of your log-book between the 26th and 27th of July?

A. There never was to my knowledge, they have been cut out by some of the young gentlemen of the ship, but the two leaves never had any thing on them.

Admiral Montagu. It may not be criminal, but it has a bad look just at so critical a period.

Q. by Sir Hugh Palliser. How was the wind on the 28th in the morning?

A. On the western angle.

Q. What weather was it?

A. Moderate.

Q. Then, Sir, did you consider Ushant a dangerous lee shore with that wind and weather?

A. No.

Q. by Court. Would you have ventured on that shore with crippled ships?

A. Not too near.

Q. by Sir Hugh Palliser. Have you been used to cruise off Brest and Ushant?

A. Yes, last war.

Q. Then do you think there was imminent danger in the middle of summer of chasing ships somewhat within Ushant, and off Brest harbour?

A. No.

Q. How much did the wind shift on the morning of the 27th between the hours of six and ten.

[Admiral

*M. of the Shrewsbury.*] ( 252 )

[Admiral Keppel was going to stop the question, but directly checked himself, and said, Sir, I beg your pardon, which is the first time I ever did in my life. You have a right to ask the question.]

A. by witness. I cannot recollect, it is down in the log-book.

Admiral Keppel. I beg leave to object to a log-book, where leaves have been torn out on the day alluded to.

Sir Hugh Palliser. The log-book of the Formidable, although leaves were torn out, was read, therefore I think no exception ought to be taken to this.

Admiral Keppel. That was read on a particular occasion, but if the Court desires, I have no objection. I think my trial on a single point of wind is of so little consequence, that if it is of any service to the prosecutor, let him have it.

Sir Hugh Palliser. I have done with the witness.

Admiral Keppel. Mr. President, as I shall not condescend to put the measure of my conduct as commander of a fleet on the opinion of a master of a ship, I shall not ask the witness any question.

Withdrew.

**MASTER** of the Shrewsbury, called in and sworn.

The log-book handed up to him.

Q. by Sir Hugh Palliser. Do you recollect the Shrewsbury wearing before the rest of the Red division, and what was the reason of it?

A. I really don't know the reason.

Q. Did you take notice at that time, the situation of the Vice of the Blue's division that remained engaged?

A. None but the Formidable.

Q. What was the observation on her?

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A. I saw nothing more than her being engaged.

Q. What conversation passed on board your ship at that time ?

Admiral Montagu. As we have refused hearing Lord Sandwich, relative to private letters ; I think we cannot admit of conversation on board a ship as evidence,

Q. After the Red division tacked, did you observe under what sails the Victory was, when on the contrary tack ?

A. I do not know.

Q. How many points did the wind shift before six and ten o'clock that morning ?

A. About two points and a half, or three points.

Q. There appear to be two or three days work in the book crossed out ?

A. There was not room for the observations of the 27th, therefore I ruled another leaf, and inserted the winds, &c. a-fresh on the following page. It is all fair, I wrote it myself.

Question by Court. Do you think the English could have brought on the action that day, if the wind had not shifted ?

A. I do not think they could.

Q. by Sir Hugh Palliser. Did the enemy wear twice before the engagement ?

A. They either wore or tacked twice ; the last time they wore, the first I am not certain.

Q. If a large fleet wear twice, does it not bring them nearer to the British fleet than if they had not so wore ?

A. Most certainly.

Q. At the time they wore, had they not run a great way to leeward before they hauled their wind on the contrary tack ?

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A. I



A. I cannot say to the distance, the weather was very thick; when it cleared up, I counted six sail before the wind.

Q. by Court. Did you make any observation in your log-book at that time?

A. Yes, that I thought they were bearing away for Brest.

Q. by Sir H. Palliser. How was the wind on the 28th in the morning?

A. Weather hazy, wind was such that she might have carried top-sails.

Q. Did you consider Ushant as a dangerous lee shore?

A. Not in a single ship, but it certainly was for a fleet of ships, some disabled.

Q. Was it a lee shore with the wind, as it was?

A. It might be made one, by running to the southward.

Q. I am stating it as if you was in the latitude of Ushant?

A. Then certainly it was not, without you made it one by running on it.

Sir H. Palliser. I have done.

Admiral Keppel. The prosecutor has omitted asking the witness for his day's work on the 28th of July, therefore I will ask him for it.

Q. What distance was you from Ushant that day?

A. I had not worked the 28th: on the morning of the 27th, the distance from Ushant was nineteen leagues.

I am going to ask a seaman's question. After the fleet got upon the starboard tack, was not the Shrewsbury on the weather-bow of the Admiral?

A. Yes.

Q. Did you look at the Admiral just before you came to action?

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A. I did.

Q. Do you recollect about four days before the fleet came in sight of the enemy, a strong gale from the N. of the W. that obliged the fleet to stand to the southward, and crippled many of the ships, the Victory in particular?

A. It did blow fresh, and to the best of my recollection the Victory had her main yard broke.

Withdrew.

Mr. REED, Master of the Queen called, but was not to be found.

Mr. MADDISON, Master of the Victory, called in and sworn.

[He begged leave to observe to the Court, that when he took the oath the other day on the delivery of his book, he did not recollect having inserted since the action, the wearing at three o'clock on the day of action, which he omitted at the time. It was a short time before the book was delivered into Court, that he inserted it, upon overhauling the remarks, and seeing it omitted, but that the book in every other respect, was the true original book kept by himself.]

Q. by Sir H. Palliser. What alteration was there in the wind from six to ten o'clock in the morning of the 27th of July?

A. One point.

Q. Have you the reckoning of the 27th and 28th of July?

A. Yes. On the 27th, lat. 48, 31, N. Ushant bore 89 degrees, 36 leagues distance. On the 28th, lat. 48, 37, N. Ushant bore N. 75 degrees lat. distance 27 leagues.

Q. Are they the current reckonings, or back reckonings, after you made the land?

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A. They

A. They are the current reckonings worked each day.

Q. How was the wind and weather on the 28th?

A. The weather squally, wind W. and by N.

Q. Was Ushant, Sir, with that wind and weather, a dangerous lee-shore in summer time?

A. With wind and weather as it was then, I should have thought, if we had been near, a dangerous lee shore.

Q. What if you was in the latitude of Ushant?

A. Ushant itself is a small spot, and a ship might clear it with a wind at W. N. W. and moderate weather.

Admiral Montagu. Should you chuse, if you was master of a flag ship, and had the command of a fleet of thirty ships, all clean and not disabled, to run nearer an enemy's coast than five or six leagues, in the afternoon of any day or night coming on?

A. No.

Q. Suppose you in the Victory going at the rate of two knots an hour, and a ship a-stern going at the rate of three knots four fathom, do you not suppose the ship a-stern would come up with you?

A. I do.

[ It is necessary to observe, that the Victory's log-book mentions her going at the time she is said to have carried much sail, at the rate of two knots an hour; the Formidable's log-book mentions, that she (the Formidable) sailed at that time three knots four fathom. ]

Admiral Keppel. If the British fleet had been caught as near Ushant in a gale of wind after the action, as they were a few days before we got sight of the French fleet, do you not think they would have been in a perilous situation?

A. I

A. If the wind had been W. and blown as hard as it did at N. and N. W. at the time the Victory lost her main-yard, there would have been great danger.

Q. by Admiral Keppel. Do you remember whether the Vice-Admiral of the Red, after he stood upon the starboard tack, was upon our weather-bow ?

A. I don't recollect.

Q. Do you know if the signal was made about ten o'clock on the Monday of the 27th, for the whole fleet to tack together ?

A. It was.

Mr. COOPER, Master of the Duke, called in and sworn.

Q. by Sir H. Palliser. Did not the Duke fire into the Foudroyant by mistake ?

A. Not that I know of.

Q. Do you consider Ushant a dangerous lee shore, the wind westerly, and in summer, suppose you was within two leagues ?

A. Certainly it would be a lee shore.

Admiral Keppel. Mr. President, I beg leave to observe to the Court, that as the Master of the Victory has mentioned the addition to the log-book in that particular place, and as that is directly one of the charges the prosecutor has against me, the court will certainly see it cannot be thought to be alledged as a crime against him : I shall beg leave to add a few words that I forgot to mention at the time the Earl of Sandwich was here : the Vice-Admiral said, that he should not have called for letters, had I not set the precedent. Now, Sir, as I have not yet opened my defence, I cannot have called for letters, or evidence of any sort ; the reason I mentioned to Lord Sandwich when he was here, that I might probably call on him, was to produce the Vice-Admiral's letters to him, wherein his opinion of my



my conduct was directly opposite to what he has charged me with; but as the Vice-Admiral says himself, his letters contain nothing to my prejudice, it is needless, otherwise I am not afraid of any thing contained in either private or public letters.

January 29.

Mr. THOMAS REED, *Master of the Queen, called in and sworn.*

Q. What was the situation of the Red division in the afternoon of the 27th with respect to the rear of the enemy, when the Admiral made the signal and stood to the southward?

A. About two miles from the rear of the enemy.

Q. Do you speak of the time they wore and stood from the enemy, or at a time earlier?

A. At the time the signal was made we might be rather nearer.

Q. Was you to windward or leeward, or what position from them?

A. They were about a point upon our lee-bow.

Q. Have you delivered in the original rough log-book kept on board the Queen?

A. No. It is my own log-book, kept daily, and shewn for approbation every day.

Q. Where is the original rough log-book?

A. At Plymouth.

President. Is it the log-book you kept day by day, during the time you was on board?

A. It is taken from the log-board.

Q. Is this the log-book you can swear to in preference to any other?

A. It is as I kept it myself, and wrote it off every day from the log-board at noon, the other was kept by the mates.

Q. Has

Q. Has there been any addition or alteration made in it ?

A. There has not.

Sir Hugh Palliser. Did you never copy from the ship's log-book into yours, the day's occurrences ?

A. Never at sea. Harbour work frequently.

Q. Do you call the coming very near the rear of the enemy within two miles ?

A. We were not within gun shot.

Q. Then do you mean less than two miles ?

A. I do.

Q. There appears to be a note, not an interlineation in the log-book, which is wrote with different ink, and a different pen ; it says, at this time the Victory hauled down the signal for battle. Was it wrote at the same time the other part of the day's occurrences were ?

A. It was wrote some part of the same day, though not at the same time : it was omitted at first writing off the log.

Q. What is the reason there is no log marked from one o'clock to five, the afternoon of the engagement ?

A. The reason was, that the variety of the courses and distances we steered, were too complicated to make remarks ; we were either running fast, or shortening sail alternately.

Q. Is it customary not to set down the courses, or rate of sailing for five hours.

Admiral Montagu. There is in the log-book at noon on the 27th an account, which says courses various. Now it strike me ; and must every one, that it means from one to five o'clock, the course was various, and as soon as the hurry of the battle was over, the book again goes on mentioning the courses were regularly.

Captain Duncan. Upon my honour, this is very extraordinary, and quite contrary to all rules of law

or

or justice : we have been near an hour examining a matter, not to any one point of the charge, but apparently are trying the master, not the prisoner ; the log-book in question is very proper, and I don't see that the trial has any thing to do with the questions asked,

Sir Hugh Palliser, At what time did the Queen come out of engagement ?

A. About half past twelve o'clock.

Q. Then is not the time the log is omitted, marking the time you came out of action ?

A. It is, we were too busily employed after coming out of action for some time, repairing and endeavouring to form a line. Our situations were so different we could not mark any straight course.

Q. Are you sure there is not any marks for those hours in the original rough log-book ?

A. There is not, I am certain.

Q. What is the reason that a leaf is cut out on the 24th of July. I believe it was a while the French fleet were in sight ?

A. I cut it out, on purpose to have a fair book, as it was shewn to the Admiral every day, and the leaf torn out, was on account of being blotted by the carelessness of some persons while it was left out.

Q. How much did the wind shift on the morning of the 27th ?

A. Two points.

Q. Does it not appear so by the log-book ?

A. No, it there says only one point.

Q. Do you recollect taking any notice of the French fleet on the morning of the 27th, and at what time ?

A. I did not take particular notice until we tacked.

Q. Did you see them tack or wear ?

A. I did not mind their particular manœuvring, being busy about our own ship.

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Q. Have you got your day's work of the 27th, and 28th of July?

A. I have. At noon, the 27th of July, latitude 48. 36. N. Ushant bore S. 86. E. 28 leagues distance. / The 28th at noon, lat. 48. 8. Ushant bore N. 74. E. distance 26 leagues.

Q. On the morning of the 28th, what part of the French fleet was seen from the Queen?

A. Three sail, imagined to be part of the French fleet.

Q. Were no other ships seen?

A. Not that I heard of. I saw none myself.

Q. Was not the signal made on board the Queen of seeing a fleet?

A. Not to my knowledge.

Q. How was the wind and weather of the morning of the 28th?

A. Wind W. and moderate weather.

Q. Was it such that you could not chase a flying beaten enemy, on apprehension that Ushant was a dangerous lee shore?

A. Ships might chase that were not disabled, without considering Ushant as a dangerous lee-shore.

Q. Were any part of the fleet dismasted?

A. Not that I know of; many appeared very much crippled.

Q. Was that appearance in sails and rigging only, or did it appear in their masts?

A. It appeared by fishing the masts, many of the top-sails being in the caps.

Q. What situation must a ship be in, and what weather, to make Ushant a dangerous lee-shore?

A. When they are prevented carrying sail, owing to variety of accidents, or blowing hard.

Sir Hugh Palliser. I have done.

Admiral Keppel. I have no question to ask.



Captain Duncan. Mr. President, I must beg that we have no more examination of masters as to log-books: we have been upwards of an hour trying the master of the *Queen*, and not one point to the purpose of the trial we sit here for. The log-books were delivered in for our inspection, and if the prosecutor examines more witnesses the same as the last, I must beg the Court to withdraw.

Admiral Keppel. I have no objection to the prosecutor looking into any log-books to find out any thing that way, or any other, to get at matter.

Sir Hugh Palliser. I only wish to remark that the *Victory's* log-book marks one knot five fathom, and then for some hours says laying to.

Admiral Keppel. Whenever I am put to my oath, I will with pleasure swear that I never saw or knew any thing of the *Victory's* log-book, directly or indirectly, from the day of action, until the second time of going to sea.

Sir Hugh Palliser. I don't think the Admiral did.

An altercation took place for some time, after which the

MASTER of the *America* was called in.

Q. by Sir H Palliser. What alteration of wind was there between the hours of six and ten, on the 27th of July?

A. Wind shifted about four points.

Q. Does the log-book say so?

Admiral Montagu. I beg the witness, according to his oath, may speak from his knowledge; the log-book is only to refresh his memory?

A. The wind shifted about four points, between nine and ten o'clock.

Q. Are the courses in your reckoning allowed for that shift of wind, or far from what it is in the log-book?

A. The

A. The shift of wind is not mentioned in the log-book, the courses are agreeable to what the log-book does mention.

Q. How was the wind and weather on the morning of the 28th ?

A. Wind about west, and moderate weather.

Q. Would you have advised not to chase a flying enemy at that time, for fear of making Ushant a lee-shore ?

A. I should not be afraid of Ushant as a lee-shore until I was within three or four leagues of the land.

Q. Under what circumstance must a ship be to make Ushant a lee-shore, and what kind of weather must it be ?

A. When a ship is between Ushant and the Seames, and the Wind at W. N. W. or W. blowing a gale of wind, she must be supposed to be in great danger.

Question by the Court. Then supposing a fleet of thirty sail, and some of them disabled, to be between Ushant and the Seames, would they be in danger, supposing it moderate weather ?

A. Not if they were three or four leagues and could carry sail.

Question by Sir H. Palliser. If one ship could be safe while carrying sail, would not thirty able to carry sail be equally safe ?

A. I think one ship would be able to get off the land in weather that a fleet could not.

Sir Hugh Palliser. I have done.

Admiral Keppel. As I am not one of the brethren of the Trinity House I shall not ask the witness any questions.

MASTER of the Foudroyant called in.

Questioned by Sir H. Palliser. Is the log-book delivered in, the original rough book kept on board the ship ?

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A. It

A. It is the book I received from the master I succeeded.

Q. Was there no other public log-book kept for the use of the ship ?

A. There was one the mate and midshipmen had in the orlop.

Q. Was no part of this book ever copied from that ?

A. No, never.

Q. Then the other was the public book that every one had access to ?

A. None but the Captain and Lieutenant had access to this.

Q. Does this agree with the public one ?

A. I never looked at the other to compare.

Q. Have you the day's work of the 27th and 28th of July with you ?

A. Yes. On the 27th at noon latitude 48. 38. Ushant bore E. half S. distance 27 leagues. On the 28th, latitude 48. 17. Ushant bore E. 11 degrees N. distance 21 leagues

Q. How much did the wind shift on the morning of the 27th, between six and ten o'clock ?

A. I do not recollect its shifting at all in that time.

Question by Court. Did it afterwards, and at what time ?

A. Yes, between ten and twelve it shifted two points.

Question by Sir H. Palliser. What sort of weather was it on the morning of the 28th.

A. Fresh gales, and cloudy.

Q. Wind and weather as it was, would you as master and pilot, have objected to chace a beaten, flying enemy, from an apprehension of Ushant being a dangerous lee-shore ?

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A. It depends much upon the condition of ships.

Q. Suppose a ship has all her masts standing, and could carry sail ?

A. With every thing standing, as a man of war, I should have had no objection.

Question by Capt. Duncan. In the situation the Foudroyant was in on that day, would you have had objection to chace ?

A. Yes, I would.

Question by Sir H. Palliser. What, at the distance you was from land ?

A. No, not at that distance.

Q. What sail could she have carried upon a wind ?

A. Third reefed top-sails.

Q. Then suppose yourself within a few miles of Ushant, do you think she could not have cleared it, the wind W. or W. N. W. with the variation in your favour, and in the latitude of Ushant, would she be in danger ?

A. She would be in danger.

Admiral Keppel. For the same reason as I said before, I have no questions to ask.

MASTER of the Berwick called in.

Questioned by Sir H. Palliser. I shall not ask the master any questions relative to his book, there is no occasion for any, only wish to observe that the day of the 28th, is wrote with different ink, and in a different hand, with many additions ; but as they may be all very innocent ones, and I dare say fair and true observations, I have nothing to say against them, only to point it out that there is such a circumstance ?

A. There is nothing put down on that day, but what I did myself at twelve o'clock at noon, on the same day.

Q. Did



Q. Did not some of our ships on the 27th of July, during the engagement, fire into the Berwick ?

A. Not that I know of.

Q. Have you not understood it was so ?

A. I have heard so by report of some of the ship's company, but not to my own knowledge.

Q. Were there not some men said to be killed by it.

A. Not to my knowledge.

Q. Did you not receive any shot in the larboard side ?

A. None that I saw.

Q. Were you told of any ?

A. No.

Withdrew.

Sir Hugh Palliser. Mr. President, as I fancy the Court are pretty near tired of the chapter of log-books and lee shores, I shall not trouble them any more on the subject ; but I beg leave to inform them, that the expresses I sent into Wales after Lieutenant Parry, who has the original minute book, have not been able to succeed. However, I have advices from the Admiralty, that persons are sent to endeavour to meet him at the Nore, where he is supposed to be gone in the Tender he commands ; if he can be found before the finish of this trial, I beg leave that I may introduce him, or any other evidence, for information of the Formidable's log-book. As to the alterations of the log-book of the Robuste, Captain Hood on the one hand acknowledges them, and on the other, the alterations have not yet been pretended to be contrary to truth. If I can be of any service in explaining any thing, I will with pleasure.

President. We have not, Sir, expressed we are tired ; we are ready to hear any evidence that you may have to offer.

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Sir Hugh Palliser. I beg that the letters of Admiral Keppel to the Admiralty of the 23d and 24th of July may be read.

Admiral Keppel. As I shall not trouble the Court with any further examination concerning the Formidable's log-book, so neither shall I object to the Vice-Admiral's witnesses to that matter. On the affair of the Robuste's log-book, I shall in the further progress of this business, take the freedom to make some observations, as well as produce evidence to shew the danger, falsehood, and mischief of such alterations.

Sir Hugh Palliser. As the Admiral has declared that he will shew the falsehood and mischief of the alterations of the Robuste's log-book, I think it is a justice due to the character of Captain Hood, that the Court will suffer him to appear, and justify himself from the attack made on him.

Admiral Keppel. I have no objection; let the Court use its pleasure.

The letter of the Admiral to the Admiralty, dated the 24th of July, was then read; it informed the Admiralty, that the French fleet had altered their position in the night; they consisted of upwards of 40 sail, great and small; and that they were much extended, that he conceived it would be dangerous for any single ship to attempt to join him.

Sir Hugh Palliser. As the evidence on my part is now concluded, I beg leave, that the Judge Advocate may read an address of mine to the Court, on the evidence that has been delivered.

Admiral Keppel. Mr. President, the evidence on the part of the prosecution being closed, I trust it is not presumption in me to declare, that I do not resist the desire of the prosecutor, to address the Court by a speech from any apprehensions of danger, but as I have never heard, nor known any such attempt in Court

Martials,

Sir

Martials, and such a precedent may be attended with bad consequences in other cases, I trust that my case, which in many instances is sufficiently new, will not be distinguished by any such innovations.

Sir Hugh Palliser. Mr. President, considering myself not suffered to address the Court in the conclusion of my evidence for the crown, I cannot think of waving it, but must take the opinion of the Court.

Admiral Keppel. Mr. President, I mean that the prosecutor has no right to make any speech on the merits of the case in any part of this cause.

Court withdrew.

After a short time spent in debate returned, and the Judge Advocate read their resolve as follows :

“ It not occurring to the memory of the Court, that it has ever been the custom of Court-Martials to admit of the prosecutor making a speech on the close of his evidence, it is therefore upon that ground, that the paper offered by the prosecutor cannot be read.”

Sir Hugh Palliser. As I cannot be suffered to make a speech now, it is very material to me to know whether after the Admiral has closed his evidence, that I may then offer an address.

Court, to Admiral Keppel. Are you ready, Sir, to go upon your defence directly, or do you chuse any time to be allowed.

Admiral Keppel. I beg leave to inform the Court, that I am ready to go upon my defence, and will, with their permission, begin it to-morrow morning.

Court. The Judge Advocate has expressed his wish that it may be postponed until Monday, as he might have time to arrange his minutes.

Admiral Keppel. I beg that the Court will notice, that I am ready to go upon my defence. I have no objections to stay until Monday. I am always guided by them.

Here

Here an altercation ensued, between Sir Hugh Pal-  
liser, Mr. Keppel, and the Court, about the propriety  
or impropriety of speeches, which was stopped by Ad-  
miral Montagu, who rose, and said, That after the  
resolve the Court had come to, he did not conceive  
that a single word ought to be said; that whenever the  
evidence for the prisoner was closed, it would then be  
a proper time to debate and determine whether the  
prosecutor might make a speech upon the evidence de-  
livered on both sides. That when that period came  
he would, with pleasure, hear both sides, and determine  
upon the merits of the case according to the best of  
his judgment, and the oath he had taken; he should  
therefore move that all the conversation that had passed  
between the prosecutor and prisoner, after the resolution  
of Court, not to hear any speech now, be erased from  
the minutes, which being done, the Court adjourned.

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January 30.

*This morning, at half past ten o'clock, the Court were resumed, and Admiral Keppel delivered the following speech :*

T H E  
D E F E N C E  
O F  
ADMIRAL KEPPEL.

S I R,

**A**FTER forty years spent in the service of my country, little did I think of being brought to a court-martial to answer to charges of misconduct, negligence in the performance of duty, and tarnishing the honour of the British navy. These charges, Sir, have been advanced by my accuser. Whether he has succeeded in proving them, or not, the Court will determine. Before he brought me to a trial, it would have been candid in him to have given vent to his thoughts, and not by a deceptive shew of kindness to lead me into the mistake of supposing a friend in the man who was my enemy in his heart, and was shortly to be my accuser. Yet, Sir, after all my misconduct; after so much negligence in the performance of duty, and after tarnishing so deeply the honour of the British navy, my accuser made no scruple to sail a second time with the man who had been the betrayer of his country! Nay, during the time we were on shore, he corresponded with me on

terms

terms of friendship, and even in his letters he approved of what had been done, of the part which he now condemns, and of the very negligent misconduct, which has since been so offensive in his eyes!

Such behaviour, Sir, on the part of my accuser, gave me little reason to apprehend an accusation from him. Nor had I any reason to suppose that the state would criminate me. When I returned, his Majesty received me with the greatest applause. Even the First Lord of the Admiralty gave his flattering testimony to the rectitude of my conduct, and seemed with vast sincerity to applaud my zeal for the service. Yet in the moment of approbation, it seems as if a scheme was concerting against my life; for, without any previous notice, five articles of a charge were exhibited against me by Sir Hugh Palliser, who, most unfortunately for his cause, lay himself under an imputation for disobedience of orders, at the very time when he accused me of negligence! this to be sure was a very ingenious mode of getting the start of me. An accusation exhibited against a Commander in Chief, might draw off the public attention from neglect of duty in an inferior officer. I could almost wish, in pity to my accuser, that appearances were not so strong against him. Before the trial commenced, I actually thought that my accuser might have some tolerable reasons for his conduct. But from the evidence, even as adduced to account for the behaviour of the Honourable Gentleman in the afternoon of the 27th of July, from that evidence I say, Sir, I find that I was mistaken. The trial has left my accuser without excuse, and he now cuts that sort of figure which, I trust in God! all accusers of innocence will ever exhibit.

I have observed, Sir, that the opinions of officers of different ranks have been taken, I trust that the

Court will indulge me with the same liberty, in the evidence for my defence. Some have refused to give their opinions. I thought it strange, as plain speaking, and a full declaration, are the best of evidences in a good cause.

I would wish, Sir, the Court to consider, that in all great naval, as well as military operations, unless the design be fully known, the several manœuvres may have a strange appearance. Masters have been called to give their opinions on the higher departments of command. Higher authorities should have been taken. Such authorities are not scarce, for I am happy to say, there never was a country served by naval officers of more bravery, skill and gallantry, than England can boast at present. As to this Court, I intreat you, Gentlemen, who compose it, to recollect, that you sit here as a Court of Honour, as well as a Court of Justice, and I now stand before you, not merely to save my life, but for a purpose of infinitely greater moment—to clear my fame.

My accuser, Sir, has been not a little mistaken in his notions of the duty of a Commander in Chief, or he would never have accused me in the manner he has done. During action subordinate officers either are (or they ought to be) too attentive to their own duty to observe the manœuvres of others. In general engagements it is scarcely possible for the same objects to appear in the same point of view to the Commanders of two different ships. The point of sight may be different. Clouds of smoke may obstruct the view. Hence will arise the difference in the opinions of officers as to this or that manœuvre, without any intentional partiality. Whether I have conceived objects in exact correspondence with the truth; whether I have viewed them unskillfully, (or as my accuser has been pleased to term it, un-officer-like)

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like) these are matters which remain to be determined. I can only say, that what Sir Hugh Palliser has imputed to me as negligence, was the effect of deliberation and choice. I will add, that I was not confined in my powers when I failed; I had ample discretion to act as I thought proper for the defence of the kingdom. I manœuvred; I fought; I returned; I did my best. If my abilities were not equal to the task, I have the consolation to think, that I did not solicit, nor did I bargain for the command. More than two years ago, in the Month of November, 1776, I received a letter from the First Lord of the Marine department, wherein he observed: "That owing to motions of foreign courts, it might be necessary to prepare a fleet of observation." My reply to this letter was: "That I was ready to receive any command from his Majesty, and I begged to have the honour of an audience." This request was complied with. I was closetted, and I told the king, that I was willing to serve him as long as my health would permit." I heard no more until the month of March 1778, at which time I had two or three audiences, and I told his Majesty: That "I had no acquaintance with his ministers, but I trusted to his protection and zeal for the public good". Here was no sinister views; no paltry gratifications; I had nothing, I felt nothing but an earnest desire to serve my country. I even accepted the Command in Chief with reluctance. I was apprehensive of not being supported at home. I foresaw that the higher the command, the more liable was I to be ruined in my reputation. Even my misfortunes, if I had any, might be construed into crimes. During forty years service, I have not received any particular mark of favour from the crown. I have only been honoured with the confidence of my sovereign, in times of public



lic danger. Neither my deficiencies, nor my misconduct, were ever before brought forward to the public. And it is now somewhat strange, that so well acquainted as my accuser must have been with my deficient abilities, it is strange, I say, Sir, that he should be the very person who brought me the message to take the command upon me; nay, further, Sir, He brought me that message with great seeming pleasure! there was, or there was not reason at that time to doubt my ability. If there was reason, how could my accuser wish me to accept a command, for which I was disqualified? If there was not any reason to doubt my professional abilities sixteen months ago, I have given no reason why they should be since called in question. When I returned from the expedition, I did not complain of any thing. I endeavoured to stop all murmurings. I even trusted the First Lord of the Admiralty in the same manner as I would have done my most intimate friend. This might be imprudent. It might be dangerous. But, Sir, I am by nature open and unguarded, and little did I expect that traps would artfully be laid to endeavour to catch me on the authority of my own words.

It was in the month of March, 1778, that I was told a fleet lay ready for me to command. When I reached Portsmouth I saw but six ships ready, and on viewing even those with a seaman's eye, I was not by any means pleased with their condition. Before I quitted Portsmouth, four or five more were ready, and I will do the persons in office the justice to say, that from that time they used the utmost diligence in getting the fleet ready for service. On the 30th of June I sailed with twenty ships of the line, and very fortunately fell in with the *Belle Poule*, and other French frigates, and the letters and papers found on board them were of material service to the state.

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Captain Marshall distinguished himself with the greatest honour. I confess that when I fell in with those frigates I was at a loss how to act. On the one hand I conceived the incident to be favourable to my country; and on the other I was fearful that a war with France and all its consequences might be laid to my charge. For any thing I can tell this may yet be the case. It may be treasured up to furnish another matter for future accusation. To this hour I have neither received official approbation, or censure, for my conduct. With twenty ships of the line I sailed. Thirty-two ships of the line lay in Brest water, besides an incredible number of frigates. Was I to seek an engagement with a superior force? I never did, nor shall I ever fear to engage a force superior to the one I then commanded, or that I may hereafter command. But I well know what men and ships can do, and if the fleet I commanded had been destroyed, we must have left the French masters of the sea. To resist a fleet requires time. From the situation of affairs, naval stores are not very soon supplied. Never did I experience so deep a melancholy as when I found myself forced to turn my back on France! I quitted my station, and courage was never put to so severe a trial.

I was permitted to sail a second time, without receiving official praise or blame for the part I had acted. These were discouraging circumstances. But they did not disturb my temper. My principal object was to get ready for sea with all possible haste. I was surprised on my return to be threatened with the fate of Admiral Byng, and I was still more surprised to be charged with cowardice.

With thirty ships of the line I sailed early in July. The French Admiral sailed from Brest with thirty-two ships. I believe that when the fleets came in sight of each

each other, the French were not a little surprized to see me so strong. I desire not to throw the slightest imputation on the courage of the French Admiral. I believe him to be a brave man, and one who had some particular reasons for the line of conduct he pursued. I was determin'd, if possible, to bring the French to battle, as I had every reason to think, that their having avoided an engagement when it was for four days in their power to attack me, was owing to their expecting some capital re-inforcements. I therefore thought that the sooner I could engage them the better; especially as I knew that the principal fleets of our trade were daily expected in the channel, and if the French fleets had been permitted to disperse without an action, our East and West-India fleets might have been intercepted, the convoys might have been cut off, and the stake of England might have been lost. I beg leave to mention, that in the reign of King William, the gallant Admiral Russel was two months in sight of a French fleet, and he could not possibly bring them to action. My being in sight of the French fleet four days before the engagement, will not therefore appear to be so extraordinary as it has been represented. Had it not been for the favourable change of wind on the morning of the 27th of July, I could not have brought the French to action when I did.

I am exceedingly sorry, Sir, that the Admiralty have refused me the liberty of producing my instructions. In all former court-martials, the instructions and orders have been sent with the charge to the members of the court. As it has been denied in this instance, I must, and do submit.

Although on the 27th of July I fought and beat my enemy, and compelled him to take shelter by returning into port, yet the effort did by no means answer my wishes. I rushed on to re-attack the enemy. Why I did

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did not accomplish my design will be seen in the evidence I shall produce. I might, it is true, have chased the three ships which were visible on the morning of the 28th of July, but with very little prospect of success. I therefore chose to return to Plymouth with my shattered fleet, to get ready for sea again, not however forgetting to leave two ships of the line to cruize for the protection of our trading fleets, which, thank God, all arrived safe.

On my return, Sir, I most cautiously avoided to utter a syllable of complaint, because it might have suspended our naval operations, which at that time would have been highly dangerous. I could not think of attending to a Court-Martial, when greater objects were in view.

With respect to the second edition of the Formidable's log-book, it appears to have been fabricated rather for the purpose of exculpating the prosecutor, than to criminate me. I shall therefore pass it over, and permit the gentleman to make the most of such an exculpation. I cannot, however, be so civil to the alterations and additions in the log-book of the Robuste. Captain Hood's conduct must have struck the Court, as I believe it did every person, except the prosecutor, with astonishment.

A great stress, Sir, has been laid on my letter to the Admiralty. There is a passage in it where I seemed to approve the conduct of every officer in the fleet. The court will observe, that I was not in my letter to inform all Europe, that a Vice-Admiral under my command had been guilty of neglect, whilst there remained a possibility of excuse for his conduct. As to Court-Martials, one very bad consequence will I am sure result from this trial: it will terrify a Commander in Chief from accepting a commission, if he should be liable to be brought to a trial by every subordinate officer.



As I have touched on my letters, I will just observe, Sir, that the most disagreeable task I ever experienced, was that of writing my letter of the 30th of July. However, if I writ ill, I am confident that I fought well, and the desertion of the trade of France was evident from the numbers of rich captures which we made: a number far exceeding any thing ever known in so short a period! his Majesty noticed this in a speech from the throne.

Mr. President. I now desire that the Judge Advocate may be directed to read the charge, and I will answer the several accusations.

### THE REPLIES OF ADMIRAL KEPPEL, To the CHARGES against HIM.

The first of the Charges, contained in the first Article, is,

“ That on the morning of the 27th of July, 1778, having a fleet of thirty ships of the line under my command, and being then in the presence of a French fleet, of the like number of ships, of the line, I did not make the necessary preparations for fight.”

To this I answer, That I have never understood preparations for fight to have any other meaning in the language and understanding of seamen, than that each particular ship, under the direction and discipline of her own officers, when in pursuit of an enemy, be in every respect cleared and in readiness for action; the contrary of which no Admiral of a Fleet, without a reasonable cause, will presume: and as from the morning of the 24th, when the French fleet had got to windward, to the time of the action, the British fleet was in unremitting pursuit of them, it is still more difficult

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scult to conceive that any thing more is meant by this charge than what is immediately after conveyed by the charge that follows it, viz. " That on the same morning of the 27th I did not put my fleet into line of battle, or into any order proper either for receiving or attacking an enemy of such force."

By the second part of the Charge I feel myself attacked in the exercise of that great and broad line of discretion, which every officer, commanding either fleets or armies, is often obliged, both in duty and conscience, to exercise to the best of his judgment; and which, depending on circumstances and situations, infinitely various, cannot be reduced to any positive rule of discipline, or practice.—A discretion which, I submit to the Court, I was peculiarly called upon by the strongest and best motives to exercise, which I therefore did exercise, and which, in my public letter to the Board of Admiralty, I openly avowed to have exercised. I admit, that on the morning of the 27th of July, I did not put my fleet into a line of battle, because I had it not in my choice to do so, consistently with the certainty, or even the probability, of either giving or being given battle; and because, if I had scrupulously adhered to that order, in which, if the election had been mine, I should have chosen to have received or attacked a willing enemy, I should have had no enemy either to receive or attack.

I shall, therefore, in answer to this charge, submit to the Court my reasons for determining to bring the enemy to battle at all events; and shall shew that any other order than that in which my fleet was conducted, from my first seeing them to the moment of the action, was incompatible with such determination.

In order to this I must call the attention of the Court to a retrospective view of the motions of the two fleets from their first coming in sight of each other.

On my first discovering the French fleet at one o'clock in the afternoon, of the 23d of July, I made the necessary signals for forming my fleet in the order of battle, which I effected towards the evening, and brought to by signal, and lay till the morning, when perceiving that the French fleet had gained the wind, during the night, and carried a pressed sail to preserve it, I discontinued the signal for the line, and made the general signal to chace to windward, in hopes that they would join battle with me, rather than suffer two of their capital ships to be entirely separated from them, and give me a chance of cutting off a third, which had carried away a topmast in the night, and which, but for a shift of wind, I must have taken. In this, however, I was disappointed, for they suffered two of them to go off altogether, and continued to make every use of the advantage of the wind.

This assiduous endeavour of the French Admiral to avoid coming to action, which, from his having the wind, was always in his option, led me to believe that he expected a reinforcement. This reflexion would alone have been sufficient to determine me to urge my pursuit, in as collected a body as the nature of such a pursuit would admit of, without the delay of the line, and to seize the first opportunity of bringing on an engagement.

But I had other reasons no less urgent.

If by obstinately adhering to the line of battle, I had suffered, as I inevitably must, the French fleet to have been separated from me; and if, by such separation, the English convoys from the East and West-Indies, then expected home, had been cut off, or the coast of England had been insulted, what would have been my situation!—Sheltered under the forms of discipline, I might, perhaps, have escaped punishment, but I could not have escaped censure. I should nei-  
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ther have escaped the contempt of my fellow-citizens, nor the reproaches of my own conscience.

Moved by these important considerations, supported by the examples of Admiral Ruffel, and other great commanders, who, in similar situations, had ever made strict orders give way to reasonable enterprise; and particularly encouraged by the remembrance of having myself served under that truly great officer, Lord Hawke, when, rejecting all rules and forms, he grasped at victory by an irregular attack, I determined not to lose sight of the French fleet, by being out-failed from preserving the line of battle, but to keep my fleet as well collected as I could, and near enough to assist and act with each other in case a change of wind, or other favourable circumstances, should enable me to force the French fleet to action.

Such were my feelings and reflections when the day broke on the morning of the 27th of July, at which time the fleet under my command was in the following position—Vice-Admiral Sir Robert Harland was about four miles distant, on the Victory's weather-quarter, with most of the ships of his own division, and some of those belonging to the center. Vice-Admiral Sir Hugh Palliser at about three miles distant, a point before the lee-beam of the Victory, with his mainsail up, which obliged the ships of his division to continue under an easy sail.

The French fleet was as much to windward, and at as great a distance as it had been the preceding morning, standing with a fresh wind at S. W. close hauled on the larboard tack, to all appearance avoiding me with the same industry it ever had done.

At this time, therefore, I had no greater inducement to form the line, than I had the morning of the former day; and I could not have formed it without greatly increasing my distance from the French fleet,  
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contrary to that plan of operation, which I have already submitted to the judgment of the Court.

The Vice-Admiral of the Blue next charges, "That although my fleet was already dispersed and in disorder, I, by making the signal for several ships in his division to chase to windward, increased the disorder of that part of my fleet, and that the ships were in consequence more scattered than they had been the day before; and that, whilst in this disorder, I advanced to the enemy, and made the signal for battle."

In this part of the charge there is a studious design to mislead the understanding, and by leaving out times and intermediate events, to make the transactions of half a day appear but as one moment.—It is, indeed, impossible to read it, without being possessed with the idea, that at half past five in the morning, when I made the signal for six of the ships of the Vice-Admiral of the Blue's division to chase to windward, I was in the immediate prospect of closing with an enemy, approaching me in a regular line, and all their motions plainly indicating a design to give battle—instead of which, both the fleets were on the larboard tack, the enemy's fleet near three leagues, if not more, to windward, going off close by the wind with a pressed sail.—My reason, therefore, for making that signal, at half past five, was to collect as many ships to windward as I could, in order to strengthen the main body of the fleet, in case I should be able to get to action, and to fill up the interval between the Victory and the Vice-Admiral, which was occasioned by his being far to leeward, and it is plain that the Vice-Admiral must have himself understood the object of the signal, since it has appeared in the course of the evidence, that on its being made, the Formidable set her main-sail,

fail, and let the reefs out of her topsail; and, indeed, the only reason why it was not originally made for the whole division, was, that they must have then chaced as a division, which would have retarded the best going ships by an attendance on the Vice-Admiral.

Things were in this situation, when, at half past nine, the French Admiral tacked, and wore his whole fleet, and stood to the southward, on the starboard tack, close hauled; but the wind immediately after they wore about, coming more southerly, I continued to stand on till a quarter past ten, at which time I tacked the British fleet together by signal. Soon after we wore about, on the starboard tack, the wind came two points in our favour to the westward, which enabled us to lie up for a part of them; but in a dark squall that soon after came on, I lost sight of the enemy for above half an hour, and when it cleared away at eleven o'clock, I discovered the French fleet had changed their position, and were endeavouring to form the line on the larboard tack, which finding they could not effect without coming within gun-shot of the van of the British fleet, they edged down, and fired on my headmost ships, as they approached them on the contrary tack, at a quarter after eleven, which was instantly returned; and then, and not till then, I made the signal for battle. All this happened in about half an hour, and must have been owing to the enemy's falling to leeward in performing their evolution during the squall, which we could not see, and by that means produced this sudden and unexpected opportunity of engaging them, as they were near three leagues a-head of me when the squall came on.

If, therefore, by making the signal for the line of battle, when the van of my fleet was thus suddenly getting within

within reach of the enemy, and well connected with the center, as my accuser himself has admitted, I had called back the Vice Admiral of the Red, the French fleet might either have formed their line compleat, and have come down upon my fleet while in the confusion of getting into order of battle, or (what I had still greater reason to apprehend) might have gone off to windward out of my reach altogether, for even as it was, the enemy's van, instead of coming close to action, kept their wind, and passed hardly within random shot.

My accuser, next asserts, as an aggravation of his former charge,

“ That the French fleet was in a regular line on that tack which approached the British fleet, all their motions plainly indicating a design to give battle.”

Both which facts have already been contradicted by the testimony of even his own witnesses: that the enemy's fleet was not in a regular line of battle, appeared by the French Admiral being out of his station, far from the center of his line, and next, or very near, to a ship carrying a Vice-Admiral's flag, and from some of their ships being a-breast of each other, and in one, as they passed the English fleet, with other apparent marks of irregularity. Indeed every motion of the French fleet, from about nine, when it went upon the starboard tack, till the moment of the action, and even during the action itself, I apprehend to be decisive against the alledged indication of designing battle; for if the French Admiral had really designed to come to action, I apprehend he never would have got his fleet on the contrary tack to that on which the British fleet was coming up to him, but would have shortened sail and waited for it, formed in the line on the same tack; and even when he did tack towards the British fleet, the alledged indication is again directly

rectly refuted, by the van of the French fleet hauling their wind again, instead of bearing down into action, and by their hoisting no colours when they began to engage.

Notwithstanding these incontrovertible truths my accuser imputes it to me that a general engagement was not brought on; but it is evident from the testimony of every witness he has called, that a general engagement was never in my choice; and that so far from its being prevented by my not having formed the line of battle, no engagement, either general or partial, could have been brought on if I had formed it; indeed it is a contradiction in terms to speak of a general engagement, where the fleet that has the wind, tacks to pass the fleet to leeward on the contrary tack.

Such was the manner in which, after four days pursuit, I was at last enabled by a favourable shift of wind to close with the fleet of France; and if I am justifiable on principle in the exercise of that discretion which I have been submitting to your judgment, of bringing, at all events, an unwilling enemy to battle, I am certainly not called upon to descend to all the minutiae of consequences resulting from such enterprise, even if such had ensued, as my accuser has asserted, but which his own witnesses have not only failed to establish, but absolutely refused; it would be an insult on the understanding of the Court, were I to offer any arguments, to shew that ships which engage without a line of battle, cannot so closely, uniformly and mutually support each other, as when circumstances admit of a line being formed; because it is self evident, and is the basis of all the discipline and practice of lines of battle. But in the present case, notwithstanding I had no choice in making my disposition for an attack, nor any possibility of getting to battle otherwise than I did, which would be alone

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ufficient to repel any charge of consequent irregularity, or even confusion, yet it is not necessary for me to claim the protection of the circumstances under which I acted, because no irregularity or confusion either existed or has been proved; all the chasing ships, and the whole fleet, except a ship or two, got into battle, and into as close battle as the French fleet, which had the option by being to windward, chose to give them. The Vice-Admiral of the Blue himself, though in the rear, was out of action, in a short time after the Victory, and so far from being left to engage singly and unsupported, was passed during the action by three ships of his own division, and was obliged to back his mizen-top-sail to keep out of the fire of one of the largest ships in the fleet, which must have continued near him all the rest of the time he was passing the French line, as I shall prove she was within three cables length of the Formidable when the firing ceased.

#### Answer to the Second Article.

The moment the Victory had passed the enemy's rear, my first object was to look round to the position of the fleet which the smoke had till then obscured from observation, in order to determine how a general engagement might best be brought on after the fleet should have passed each other.

I found that the Vice-Admiral of the Red, with part of his division, had tacked, and was standing towards the enemy with top gallant sails set, the very thing I am charged with not having directed him to do; but all the rest of the ships that had passed ahead of me were still on the starboard tack, some of them dropping to leeward, and seemingly employed in repairing their damages. The Victory herself was in

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no condition to tack, and I could not immediately wear and stand back on the ships coming up a-stern of me out of the action (had it been otherwise expedient) without throwing them into the utmost confusion. Sir John Ross, who very gallantly tried the experiment, having informed the Court of the momentary necessity he was under of wearing back again to prevent the consequences I have mentioned, makes it unnecessary to enlarge on the probable effect of such a general manœuvre, with all the ships a-head. Indeed I only remark it as a strongly relative circumstance, appearing by the evidence of a very able and experienced officer, and by no means as a justification for having stood away to a great distance beyond the enemy before I wore, because the charge itself is grossly false. In fact, the Victory had very little way while her head was to the southward, and although her damages were considerable, was the first ship of the center division that got round towards the enemy again, and some time before the rest were able to follow her; since, even as it was, not above three or four were able to close up with her on the larboard tack, so that had it even been practicable to have wore sooner than I did, no good purpose could have been answered by it; hence I must have only wore the sooner back again to have collected the disabled ships which would have been thereby left still farther a-stern.

The Formidable was no otherwise left engaged with the enemy during this short interval than as being in the rear, which must always necessarily happen to ships in that situation, when fleets engage each other on contrary tacks, and no one witness has attempted to speak to the danger my accuser complains of, except his own Captain, who on being called upon to fix the time when such danger was apprehended, stated it to be before the Formidable opened her fire, which

renders the application of it as a consequence of the second charge too absurd to demand a refutation.

### Answer to the Third Article.

As soon as I had wore to stand towards the enemy, I hauled down the signal for battle, which I judged improper to be kept abroad till the ships could recover their stations; or, at least get near enough to support each other in action. In order to call them together for that purpose, I immediately made the signal to form the line of battle a-head of all the center and Red division, I embraced that opportunity of unbending her main topsail, which was totally unserviceable, and in doing which, the utmost expedition was used; the ships a-stern of me doing all they could in the mean time to get into their stations, so that no time was lost by this necessary operation.

The Formidable was a-head of the Victory, during this period; it was her station in the line on that tack. Yet at the very moment my accuser dares to charge me with not calling the ships together to renew the attack, he, himself, though his ship was in a manageable condition, as appeared by the evidence of his own Captain, and though he had wore, expecting, as he says, the battle to be renewed, quitted his station in the front of that line of battle, the signal for which was flying; passed to leeward of me, on the starboard tack, which I was advancing to the enemy, and never came into the line during the rest of the day.

In this situation I judged it necessary that the Vice-Admiral of the Red, who was to windward, and passing forward on my weather-bow, with six or seven ships of his division, should lead on the larboard-tack, in order to give time to the ships which had

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had come last out of action to repair their damages, and get collected together; and the signal appointed by the 31st article of the Fighting Instructions not being applicable, as the French fleet was so nearly a-head of us, that by keeping close to the wind we could only have fetched them, I made the Proserpine's signal, in order to have dispatched Captain Sutton with a message to Vice-Admiral Sir Robert Harland, to lead the fleet to the larboard tack, but before he left the Victory, with the orders he had received, the French fleet wore and stood to the southward, forming their line on the starboard tack, their ships advancing regularly out of a collected body, which they had got into from the operation of wearing, and not from any disorder or confusion, which really existed. I could have derived no immediate advantage from it, not having a sufficient force collected to prevent their forming, by an attempt to renew the attack. The Victory was at this time the nearest ship to the enemy, with no more than three or four of the center division, in any situation to have supported her, or each other in action. The Vice-Admiral of the Blue was on the starboard tack, standing away from his station, totally regardless of the signal that was flying to form the line, and most of the other ships, except the Red division, whose position I have already stated, were far a-stern, and five disabled ships at a great distance on the lee-quarter. Most of these facts are already established by the accuser's own evidence. I shall prove and confirm them all by the testimony of that part of the fleet, whose situations will enable them to speak to them with certainty.

I trust they will convince the Court, that I had it not in my power to collect the fleet together to renew the fight at that time, and that from their not  
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being able to follow me, I consequently could not advance with them: that I did not haul down the signal for battle till it ceased to be capable of producing any good effect: that during the whole time I stood towards the enemy, I endeavoured, by the most forcible of all signals, the signal for the line of battle, to call the ships together in order to renew the attack: that I did avail myself of the ships that were with the Vice-Admiral of the Red as far as circumstances admitted; and that I therefore did do the utmost in my power to take, sink, burn, and destroy the French fleet, which had attacked the British fleet.

Answer to the fourth Article.

The French fleet having wore and began to form their line on the starboard tack, by the wind, which if they had kept would have brought them close up with the center division, soon afterwards edged away, pointing towards four or five of the disabled ships, which were at a distance to leeward, and with evident intention to have separated them from the rest of the fleet; to prevent which, I made the signal to wear, and stood athwart their van in a diagonal course, to give protection to those crippled ships, keeping the signal for the line flying to form and collect the fleet on the starboard tack. As I had thus been obliged to alter my disposition, before Captain Sutton left the Victory, with my former message, I dispatched him with orders to the Vice-Admiral of the Red to form with his division at a distance a-stern of the Victory, to cover the rear, and keep the enemy in check, till the Vice-Admiral of the Blue should come into his station, with his division, in obedience to the signal. These orders

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ders the Vice-Admiral of the Red instantly obeyed, and was formed in my wake before four o'clock, when, finding that while by the course I steered to protect the crippled ships, I was nearer the enemy, the Vice-Admiral of the Blue still continued to lye to windward, and by so doing kept his division from joining me, I made the signal for ships to bear down into my wake, and that it might be the better distinguished (both being signals at the mizen peak) I hauled down the signal for the line for about ten minutes, and then hoisted it again. This signal he repeated, though he had not repeated that for the line of battle; but by not bearing down himself, he led the ships of his division to interpret his repeating it as requiring them to come into his wake, instead of mine.

Having now accomplished the protection of the disabled ships, and the French fleet continuing to form their line, ranging up to leeward, parallel to the center division, my only object was to form mine, in order to bear down upon them to renew the battle; and therefore, at a quarter before five o'clock, after having repeated the signal for ships to windward to bear down into my wake, with no better effect than before, I sent the Milford with orders to the Vice-Admiral of the Red to stretch a-head, and take his station in the line, which he instantly obeyed; and the Vice-Admiral of the Blue being still to windward, with his fore top-sail unbent, and making no visible effort to obey the signal, which had been flying the whole afternoon, I sent out the Fox, at five o'clock, with orders to him to bear down into my wake, and to tell him, that I only waited for him, and his division, to renew the battle. While I was dispatching these frigates, having before hauled down the signal to come into my wake, I put aboard the signal for all ships to come into their stations,

stations, always keeping the signal for the line flying. All this producing no effect on the Vice-Admiral of the Blue, and wearied out with fruitless expectation, at seven o'clock I made the signal for each particular ship of the Vice-Admiral of the Blue's division to come into her station; but before they had accomplished it, night put an end to all further operations.

It may be observed, that amongst these signals, I did not make the Formidable's. If the Vice-Admiral chuses to consider this as a culpable neglect, I can only say, that it occurred to me to treat him with a delicacy due to his rank, which had some time before induced me to send him the message by Captain Windsor, the particulars of which he has already faithfully related to the Court.

I trust I have little reason to apprehend that the Court will be inclined to consider my conduct as I have stated it, in answer to this fourth article of the charge, as disgraceful to the British flag? After I had put upon the same tack with the enemy, to protect the disabled part of my fleet, and to collect the rest together, there would have been little to do to renew the battle, but bearing right down upon the enemy, if my accuser had led his division in obedience to the repeated signals and orders which I have stated. The Victory never went more than two knots, was under her double reefed top-sail, and fore-sail much shattered, which kept the ships that were near her under their top-sail, and suffered the French fleet, which might always have brought me to action, if they had inclined to do it, to range up parallel with the center, under very little sail. It was to protect the five disabled ships above-mentioned, and to give the rest time to form into some order, that I judged it might be expedient to stand as I did under that easy sail, than to bring to with my head to the southward. The Court will

will judge whether it was possible for any officer in the service, really to believe that these operations could give the appearance of a flight, or furnish a rational pretence to the French Admiral to claim the victory, or publish to the world that the British fleet had run away.

Answer to the fifth Article.

On the morning of the 28th of July, the French fleet, (except three sail which were seen upon the lee quarter) was only visible from the mast heads of some of the ships of the British fleet, and at a distance from me, which afforded not the smallest prospect of coming up with them, more especially as their ships, though certainly much damaged in their hulls, had not apparently suffered much in their masts and sails. Whereas the fleet under my command was generally and greatly shattered in their masts, yards, and rigging, and many of them unable to carry sail. As to the three French ships, I made the signal at five o'clock in the morning for the Duke, Bienfaisant, Prince, George, and Elizabeth, to give them chase, judging them to be the properest ships for that purpose, but the two last were not able to carry sufficient sail to give even countenance to the pursuit; and looking round to the general condition of my fleet, I saw it was in vain to attempt either a general or a partial chase. Indeed, my accuser does not venture to alledge that there was any probability, or even possibility, of doing it with effect, which destroys the whole imputation of his charge.

Under these circumstances, I could not mistake my duty, and I was resolved not to sacrifice it to an empty shew and appearance which is beneath the dignity of an officer, unconscious of any failure or neglect. To

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have urged a fruitless pursuit, with a fleet so greatly crippled in its masts and sails, after a distant and flying enemy, within reach of their own ports, and with a fresh wind blowing fair for their port, with a large swell, would have been not only wantonly exposing the British fleet under my command without end or object, but misleading and defeating its operations, by delaying the refitment necessary for carrying on the future service with vigour and effect.

My accuser asserts, by a general conclusion to the five articles exhibited against me, that from what he states as instances of misconduct and neglect in me, "a glorious opportunity was lost of doing a most essential service to the state," and that the honour of the British navy was tarnished.

The truth of the assertion, That an opportunity was lost, I am not called upon either to combat or deny. It is sufficient for me, if I shall be successful in proving, that that opportunity was seized by me, and followed up to the full extent of my power: if the Court shall be of that opinion, I am satisfied; and it will then rest with the Vice-Admiral of the Blue, to explain to what cause it is to be referred, that the glorious opportunity, he speaks of, was lost, and to whom it is to be imputed, (if the fact be true) that the honour of the British navy has been tarnished.

Having now, Sir, finished my replies, I shall call witnesses to prove my innocence. I have heard it asserted as matter of right to alter a log-book. I will only say that there is a wide difference between correcting inaccuracies, and malicious alterations, for the purpose of aiding malicious prosecutions.

As to my prosecutor, I have even his own letters, of as late date as the 5th of October, wherein he thus writes to me. "I know that you would rather meet the French fleet." Yes, Sir, that very French fleet which  
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he afterwards accused me of running away from ! I cannot produce these letters in evidence, but I will shew them to any gentleman out of Court who desires to see them. I will also shew to any gentleman a paper which my prosecutor requested me to sign but a very short time ago, and I refused to sign it. In the news papers my prosecutor denied receiving any message by the Fox frigate. Capt. Windsor swore to the delivery of such a message. He proved in evidence that he received the message from me at five o'clock, and delivered it to the Vice-Admiral himself at half past five o'clock. Capt. Bazely endeavoured to refute this evidence. But I shall call witnesses to prove the delivery of the message. My conscience is perfectly clear. I have no secret machinations, no dark contrivances to answer for. My heart does not reproach me. As to my enemies, I would not wish the greatest enemy I have in the world to be afflicted with so heavy a punishment as ——— my accuser's conscience.

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[The following are extracts of two letters from Sir Hugh Palliser ; and a copy of the paper which he desired Admiral Keppel to sign.

*Extract of a letter from Sir Hugh Palliser, to Admiral Keppel, dated Formidable at Sea, 5th October, 1778.*

“ THESE prizes coming in our way are not unacceptable, but I know you would rather meet the French fleet,

I am, with the greatest regard and respect,

Dear Sir,

Your most obedient humble Servant,

HUGH PALLISER.”

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*Extract*

*Extract of a letter from Sir Hugh Palliser, to Admiral Keppel, dated Pall-mall, 3d November, 1778.*

“ I think myself so much intitled to have my conduct on the day we engaged the French fleet justified by you, Sir, as Commander in Chief, from those foul aspersions, that I confess I have been expecting your offer to do it; I have waited for your coming to town to ask it: being now informed of your arrival, I lose no time in desiring you will contradict those scandalous reports that have been propagated as aforementioned, by publishing in your own name the inclosed paper, which I have the honour to inclose herewith, or something to that effect, that may be more agreeable to you and as may be agreed on, if you will permit me the honour to wait on you tomorrow morning.

“ I must beg the favour of your speedy answer, that my honour and reputation may not be farther wounded by delays.

I am, very respectfully, Sir,

Your very obedient,

Humble Servant,

HUGH PALLISER.”

To the Hon'ble  
Admiral Keppel, &c.

Having seen a paragraph in the General Advertiser of the 15th of last month highly reflecting on the conduct of Vice-Admiral Sir Hugh Palliser, on the 27th of July last, when the fleet under my command engaged the French fleet; and the Vice-Admiral having informed me that reports to the same purpose have been propagated by some of the officers of the

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the Victory, I think it necessary in justice to Sir Hugh Palliser to publish to the world, that his conduct on that day was in every respect proper, and becoming a good officer; and I further declare that when I made the signal in the evening for the ships to windward to bear down into my wake, and afterwards for particular ships of Sir Hugh's division to do so, he repeated those signals properly; and that the calling his and Vice-Admiral Sir Robert Harland's division into my wake in the evening, was not for the purpose of renewing the battle at that time, but to be in readiness for it in the morning, that in obedience to the said signals such of the ships of Sir Hugh Palliser's division as were in condition for it, did immediately bear down, as did the rest so soon as they were able, so that Sir Hugh Palliser and his whole division were all in my wake accordingly the next morning before day-light ready for engaging.]

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February 1.

Sir ROBERT HARLAND, *Vice-Admiral of the Red Division was called in and sworn.*

Questions by Admiral Keppel. Were the French to windward or leeward of the British fleet on the 25th and 26th?

A. To windward.

Q. Had they it in their power to come to action on any of those days?

A. They had.

Q. Did I pursue them with a press of sail until I came to action?

A. You pursued them with a press of sail until you came up with them.

Q. Had you commanded a similar fleet to the one the French did, would you have hesitated one moment to



to bring on an action, the wind and weather as it was ?

A. I would not.

Q. Had I pursued in a line of battle, could I have preserved my nearness to the French fleet ?

A. I think not.

Q. Did you see the French fleet the 27th in the morning ?

A. Yes on the larboard tack when the day broke, the English fleet was at that time on the same tack.

Q. Did the French seem to shew any more intention of coming to action then, than they did on the former days ?

A. They did not.

Q. When I got upon the starboard tack, would not forming a line put it out of my power of getting into action that day ?

A. Certainly it would, unless the French were willing to come to you.

Q. Was there at any time, while the French was on the starboard tack, a large squall which obscured them from your sight ?

A. They were obscured frequently that morning.

Q. When did the firing begin between the two fleets ?

A. Between eleven and twelve o'clock ; the French were then on the larboard tack.

Q. Were not the center and rear of the French, when they came into action, in a kind of confusion ?

A. The van was not well connected with the center, nor the center with the rear ; there were six ships that had got up close, but two I likewise saw in a confusion.

Q. Did not the French begin their fire at your ship at a great distance ?

A. They did.

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Q. As a flag officer, if I had ordered ships of your division to chace to windward, and afterwards had got into action, so as not to be able to give them signal, would you not have thought yourself authorized to have ordered those ships to come to you, if you saw at that particular moment they could be of service ?

A. I certainly should have thought myself authorized to have done any thing for the general good.

Q. After you passed the rear of the French fleet did you observe the Formidable before she was out of the fire ?

A. The first I saw of her was when she was coming out of the action. The next time I saw her she was, I think, upon our weather beam, as going down to form in your rear.

Q. Did there appear to you, Sir, the least danger of the Vice of the Blue being cut off ?

A. There did not appear the least intention of the French to cut her off.

Q. After you got out of action, how many ships of your division were connected with you ?

A. At most, seven.

Q. How many points of the compass was your division to windward of the French fleet ?

A. They were upon our lee-bow, and a-head withall.

Q. If I had directed you to lead down upon the enemy, did it appear to you that I had ships with me connected properly to give you succour in your re-attack upon the enemy, considering the appearance the fleet then made ?

A. Certainly you had not.

Q. Did you while you was on the larboard tack observe the French draw out of the body of their fleet and form upon the starboard ?

A. I

A. I did.

Q. Did you see them at that time confused and in disorder ?

A. They were not close connected in a line.

Q. Did it appear that they were confused, or was it as might be naturally expected after coming out of battle ?

A. There did not appear any confusion.

Q. Under the situation our fleet was in, was it in my power to prevent the French forming a line upon the starboard tack ?

A. No more than it was in your power to collect your ships to do it with.

Q. What then would have been the probable consequence of ordering you at that time to re-attack them ?

A. I should have obeyed, and the French would have deserved to be hanged if they had not taken me, and the ships of my division.

Q. Did I after the action use my endeavours to get my line formed ?

A. Certainly you did.

Q. Did you receive any orders from me by the *Proserpine* after the fleet wore to southward ?

A. I received orders to form my division a-stern of the *Victory*.

Q. If you had not received such orders, did you see reason to have put yourself in the same position at your own risk as an officer at the moment ?

A. Before I received those orders, I saw the necessity there was for it, and was doing it at the time I received my orders.

Q. What would have been your inducement ?

A. Seeing the commander in chief unsupported within the power of the whole French force that was a-stern of him.

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Q. Had the Vice of the Blue, while you was in the Victory's rear, have bore down with his division, to have taken his station, would you not have thought yourself justified to have immediately taken your station a-head before orders had reached you?

A. I certainly should have expected orders, but if I had not received them, I should have done it without, had I seen the necessity, and it was plain I could not receive orders.

Q. At what time did you receive orders to go into your proper station?

A. After five o'clock.

Q. What was the situation and appearance of the French fleet at that time?

A. They had formed their line to the southward.

Q. Was the signal for the line of battle flying on board the Victory the whole afternoon, except the short time it was hauled down to make the signal plainer for bearing down?

A. It was.

Q. Had the British fleet standing to the southward, on the same tack the French were (under the sail they carried) the appearance of a flight?

A. No, fie! No.

Q. Were we then avoiding them, or were we endeavouring to form so as to bring on a general and decisive engagement?

A. You was using every means to collect and form your force, and I make no doubt but you then meant to bring on a general action if you could.

Q. Did I neglect any opportunity of bringing on the action, while there was day-light, after I had collected my force?

A. If I have not said so before, I say it now, you never had the means of doing it.

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Q. As you passed the Victory to get into your station, did you go to windward or to leeward?

A. To windward about a mile.

Q. Did you observe the sail the Victory was under, during the afternoon?

A. Some time under her top-sails, some time her fore-sails, the latter might be reefed.

Q. What sail did you carry during the night to preserve your station?

A. Sometimes top-sails, sometimes fore-sails; top-sails with two reefs.

Q. Did you carry your distinguishing lights all night?

A. I always did.

Q. Was the Victory at her bowsprit end seen from the Queen all night?

A. I saw them myself most of the night, a very strong light.

Q. Do you recollect at what rate you went all night?

A. It was under two knots generally, never above three.

Q. On the 28th in the morning, did it not appear that the French fleet had ran off in the night?

A. They certainly made their escape.

Q. Was the French fleet seen on the morning of the 28th from the Queen's mast head?

A. They were steering to the S. E.

Q. Could it be discerned what sail they were making?

A. They were at too great a distance, they were only just able to be seen.

Q. Had I attempted to pursue them, was there a probability of getting up with them in the condition the British fleet was in, before they entered the Port of Brest?

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A. There was not.

Q. You have heard all the charges against me, I beg that you will inform the Court in what, and how many instances you saw me negligently perform my duty on the 27th or 28th of July?

A. I know of none, therefore I cannot speak of any.

Sir Hugh Palliser. I have no questions to ask.

Withdrew.

Mr. MORE, Clerk and Purser to Admiral Keppel.

Q. Was it your place to attend near to me to take my instructions and make minutes?

A. It was.

Q. Do you recollect the situation of the two fleets on the morning of the 27th?

A. At half past five in the morning of the 27th of July the Vice of the Red with most of the ships of his division, some of the ships of the centre also, were from three to four miles to windward of the Victory, a little before the quarter. The Vice Admiral of the Blue and his division was from three to four miles to leeward of the Victory from the beam to about the chest, one or two ships might be before the chest-tree, the remainder of the centre division were about the Victory; in speaking of the rear division I must except the Ocean, she was upon the quarter, and all the ships of that division except her had their main-sails up; the Vice Admiral of the Blue had his main-sail up.

Q. What was the position of the French Admiral with respect to the Victory, which was in the centre of the British fleet?

A. The French Admiral was rather before the beam of the Victory, nearly in the centre of his own fleet, which was approaching much the same in line of battle

as they had been the preceding mornings about nine or ten miles to windward. The French fleet were in general under their topsails and fore-sails.

Q. Did you see a signal made on board the Victory for the Vice-Admiral of the Blue's division to chase to windward that morning, and at what time?

A. At half past five signal was made for the Shrewsbury, Robuste, Egmont, America, Terrible, Elizabeth, Defiance and Worcester, to chase to windward.

Q. What appeared to you to be the intention of that signal?

A. Most of the centre were to windward of the Victory. There was a large space between the Vice of the Blue's division, and the leeward-most ships of the centre, and I apprehend it was meant to bring up the less sailing ships of the Vice of the Blue's division to support the centre, if the French would permit us to bring on an action.

Q. At the time the signal was made, was there any greater appearance of the French intending to fight, than there was on the preceding days?

A. None. They were close hauled, carrying as much sail as their worst sailing ships could keep up with stern in: they were on the larboard tack.

Q. Did you observe the French fleet change their position between the hours of eight and ten in the morning of the 27th of July?

A. When I speak of the French fleet altering, I mean to speak of the French Admiral, as my observation was particularly to him, as some one or other of their fleet was continually wearing or tacking to get into their station; but at half past nine, the French Admiral tacked, most of his fleet wore about before him, and continued to carry the same sail as they did on the larboard tack.

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Q. At what hour did the British fleet tack after the French fleet?

A. Soon after the French Admiral was about, the wind veered and came a little to the westward, the British fleet therefore lay up till a quarter past ten.

Q. Was there any alteration of the wind soon after we came on the larboard tack?

A. It shifted near two points, and brought us to lay up for them; and soon after we lost sight of the French in a heavy squall.

Q. Did you see the French fleet get on the larboard tack before the action, and at what hour?

A. We lost sight of the French from twenty minutes past ten until eleven o'clock. When we saw them at eleven o'clock, they appeared in considerable confusion, a large body of them bearing S. S. E.; they were then getting up sail on the larboard tack, the Admiral spoke to me at the time, upon which I went upon the forecastle and saw some of them so close together that they were aboard of each other; most of the people on the Victory's quarter deck saw the same.

Q. At what time did the firing begin between the two fleets?

A. At fifteen minutes past eleven o'clock; the wind was then at W. S. W.

Q. When the French fleet began firing, had they their colours flying?

A. No, neither the English nor French had.

Q. At what time did I make the signal for battle?

A. About twenty minutes past eleven o'clock.

Q. Was the French fleet then in a regular line of battle?

A. At a quarter past eleven o'clock. When the action commenced, the French van was very irregular, some more than a mile to windward of the other; they



they all appeared to keep their wind as they approached ; they were at very different distances of each other. What was properly their center was pretty compactly formed, but not in a line. What should have been their rear, I could make an observation of, as they were far to windward of Monsieur de Orvilliers in the Bretagne, and ships about him, and must have passed us while we were engaged with what was properly their center.

Q. Were the English fleet, though not in a line when they came into battle, in a situation so as speedily to support each other ?

A. They were.

Q. How long after I made signal for battle was it before the Victory engaged with the French Admiral ?

A. About 27 minutes.

Q. Did not some of the French van fire at a great distance from the Victory ?

A. All the French van, except two or three, fired at random at her.

Q. Did I return the fire ?

A. No.

Q. How many ships a-head of the French Admiral, passing the Victory, fired so as to do execution ?

A. Three sail, but except two or three guns being fired, the fire was ordered to be kept for the French Admiral.

Q. When the Victory began firing on the Bretagne, how did the French Admiral appear to be situated with respect to his fleet ?

A. At a quarter before twelve, when we began firing on the Bretagne, there was a three deck ship with a white flag at her fore top-mast-head close a-stern of the Bretagne, there were three private ships, and

and a white and blue flag ship a-head, and two sail a-stern of him.

Q. Did the Victory expect when we were obliged to avoid getting on board the French Admiral, keep her wind so as to close one fathom of her distance?

A. Until you mentioned that particular, I did not know the helm was ever put up, I should have said she was always as close up to the wind.

Q. What time did the Victory pass the rear of the French fleet?

A. At one o'clock.

Q. At what time did I make the signal to wear towards the French?

A. It was made within ten minutes afterwards, but the Victory could not be wore until a quarter before two o'clock.

Q. Can you remember what ships wore with the Victory, and when the signal for battle was hauled down?

A. Not a single ship wore with the Victory; the Prince George continued to stand on the starboard tack until we had passed her on the larboard; about a quarter of an hour afterwards, she and one or two sail more got about; the signal was hauled down about a quarter before two.

Q. Can you say what other ships were connected near the Victory?

A. From a quarter before two until three o'clock, we were on the larboard tack, standing after the French fleet, there was not a single ship standing with the Victory; we had passed all the ships that fought a-stern of us; there was one ship of ours with her mizen-top-mast gone, which was a-breast of our Chest tree, which I took to be the Foudroyant.

Q. What time was the signal for line of battle made after being upon the larboard tack?

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A. At two o'clock. While we were on that tack there were no ships near except Prince George, Bienfait, and Foudroyant; the Valiant got round soon after but could not join, yet neither of those ships were ever in their station, while we were on our larboard tack; from a quarter before two until three they were more than a mile from us, except the Foudroyant.

Q. What was the position of the French fleet while the Victory was standing towards them?

A. It was about three sail to windward of the fore-sail, the center was right a-head of us, and their stern was not very open on the lee-bow; at half past two they were near three miles from us, they then began to get round and form upon the starboard tack; for some time they pointed their head as if they would weather the Victory, but a little before three they kept from the wind, and pointed to four or five sail of the English ships that were far to leeward, which appeared disabled.

Q. Did you observe one of the French ships go off before the wind?

A. At half past two I saw one go off with her main-yard and mizen-top-sail gone, and was soon after followed by a frigate.

Q. What was the situation of the Red division at this time, and how many ships did it consist of, while we were upon the larboard tack?

A. When I first saw the Vice-Admiral of the Red, after the action had ceased in the van, he was on the lee-bow of the Victory standing towards us on the larboard tack, five minutes past one o'clock; they continued on that tack, some of their ships passing very close. At the time we wore, the Vice-Admiral of the Red, with about seven sail, himself included; before we wore, they were on our starboard bow; at half past two, when the French were forming a line on the  
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starboard tack, and we standing towards them on the larboard, the Vice-Admiral was then a little before the beam of the Victory; at three o'clock they were broad upon the larboard-bow, about two miles and a half from us.

Q. At what time did the French fleet begin standing to the southward?

A. At half past two o'clock, the Vice-Admiral of the Red with six or seven sail were to windward, nearly a-breast of the Victory, they were about passing us, and continued to stand on the starboard tack, till all of his division had passed us; there were four or five sail to leeward; about four of the center division in different positions round us at about a mile distant, which four, were all (except the Vice of the Red) that were on the larboard tack near us; the signal was made for the British fleet to wear to the southward, at seven minutes past three o'clock.

Q. Do you recollect the position of the Vice-Admiral of the Blue, and his division, at that time?

A. After we were about standing to the southward, we passed the Formidable to leeward; from that time several of that division continued to join her, but I cannot say what number; they continued to windward, the signal was then flying for line of battle; it was made at two o'clock, and continued flying until about twenty minutes before four o'clock; it was down then to let the fleet see the signal for the ships to windward to come into the Admiral's wake, and was in about ten minutes again hoisted, the fleet having seen that signal; afterwards it was not hauled down.

Q. Did the Victory lead to give protection to the four or five disabled ships you have described?

A. On the Victory's first coming about on the starboard tack, she was kept to the wind about ten mi-

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minutes, to collect some of the ships; but the Admiral gave that up, saying that when he had her kept from the wind, the French had a design to affront her, (these were his words) by attacking those disabled ships to leeward. She was then kept from the wind, steering S. S. E. The wind was rather abaft the beam, about half a point.

Q. What time was the signal for the ships to windward to come into the Admiral's wake made again that afternoon?

A. It was first made at forty minutes after three, hauled down at ten minutes before four. The signal for the line was then hoisted; at half past four the signal for ships to come into his wake was again made; the signal for line of battle was not hauled down when that signal was made a second time, as it was at first.

Q. What was the situation of the two Admirals, from that time, until five o'clock?

A. The Vice of the Red, with six or seven sail, were forming a-stern of the Victory, in consequence of a message which had been sent him by the Proserpine; there was no ship of the center division, except the Foudroyant a-stern of the Victory. The Vice-Admiral of the Blue, and about seven or eight sail at that time were to windward, between the Victory's weather beam and quarter, keeping their wind between two and three miles from us. Captain Faulkener, at that time gave me his glass to see that we could mount every gun and port separately; three or four sail were then to leeward, upon our bow.

Q. What was the situation of the French fleet, from three o'clock, with respect to the British fleet, and what had been their conduct?

A. They were continually forming their line, keeping nearly parallel with the Victory, and some ships

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ships nearer, at half past four. Their head-moſt ſhips were about three miles a-ſtern, and to leeward of the Victory.

Q. At that time what ſail had the Victory ſet ?

A. Fore-ſail, fore and mizen top-ſail, her main-top-ſail was alſo ſet with two reefs in it, but was ſoon unbent, as it was unſerviceable ?

Q. Did you hear any meſſage or orders ſent by frigates in the courſe of the afternoon ?

A. At five o'clock the Milford was ordered to acquaint Sir Robert Harland to make ſail with his diviſion that were a-ſtern of the Victory, and take his ſtation in the van. The Fox was ſent immediately after to Sir Hugh Palliſer, to tell him to bear down, as the Admiral waited only for him and his diviſion to bring the enemy again to action.

Q. Do you recollect any other ſignal at that time ?

A. At five minutes paſt five, the ſignal was made for all ſhips to get into their ſtation; it was a Spaniſh flag at the main-top maſt head; but the Prince George and Bienſaiſant, whoſe ſtations were a-ſtern of the Victory on that tack, had ſeen the Vice-Admiral of the Red from his diviſion a-ſtern of the Victory; they fell into the line in the manner they would have done had the ſignal been the reverſe; thoſe two ſhips pennants were then thrown out to let them know the ſignal had been given to Sir R. Harland, to do as he had done, and they obeyed it immediately.

Q. What ſhips were then in their ſtation a-ſtern of the Victory after the Vice-Admiral of the Red had quitted the rear and gone a-head to his proper ſtation in the van ?

A. None but the Foudroyant.

Q. Did the Vice-Admiral of the Blue lead down his ſhips agreeable to the orders ſent by the Fox any time in the afternoon of the 27th of July ?

A. No.

Q. What was the position of the Vice-Admiral of the Blue from five o'clock until seven?

A. He kept nearly the same bearings of us, but kept his wind between the beam and quarter.

Q. Was there any particular signals about seven o'clock for them to come into their station.

A. At seven o'clock the particular signals of every ship of the Vice-Admiral of the Blue's division, except the Formidable, was made to come into their station. The general signal had been flying all along, but at seven o'clock their particular pennants were thrown out.

Q. What sail was the Victory under the remainder of the afternoon?

A. Double reefed topsails, and foresails, going from two to two and a half knots.

Q. Did the Victory make a less sail than that towards dark?

A. At eight o'clock we close reefed the topsails.

Q. What was the situation of the two fleets when night sat in?

A. The Vice-Admiral of the Red was formed a-head of the Victory; the ships of the center were all but one or two in their place; the Fordroyant, Prince George, and Bienfaisant, were formed in a line a-stern of us; a considerable way a-stern of them was one ship (but not in a line) endeavouring to get into her station, I took it for the Vengeance; the Vice-Admiral of the Blue and the rest of the ships wore to windward about three or four miles standing on, except three or four sail, which had began to obey the signal of coming into their station. The French fleet were steering a parallel course with the Victory, the third ship of the French van was abreast of our quarter about a mile and a half to leeward

ward of us. The French line was formed with fourteen sail a-head of their Admiral, and the same number astern of him, their best sailing ships were under topails and fore sails only; others their main sails set, &c.

Q. Was the signal for a line, and for ships to come into their station flying until dark?

A. Yes, and long after.

Q. Did you see the Formidable repeat the signal for a line, or for ships to come into their station any time that afternoon?

A. We passed the Formidable twice from half past two to half past three. She had at those times no signal flying of any sort, at the time the signal for coming into the Admiral's wake (a little before four o'clock) the Formidable repeated the signal, but I never saw her repeat any other that afternoon.

Q. Where was the Formidable when you last saw her in the evening of the 27th?

A. About three miles to windward of the Victory, standing upon a wind between the quarter and beam, about a point and a half.

Q. On the morning of the 28th of July, how many of the French fleet were in sight?

A. Three sail, one much larger than the other two, the nearest about three miles from the Victory, the Bienfaisant, the Duke, the Prince George, and Elizabeth's signals were made to chase, but the Elizabeth said she could not carry sail, the Prince George did the same.

Admiral Keppel. I have examined the witness to inform the court the particular narrative of proceedings, he being in a station able to observe them; the examination has been tedious, but I hope the Court will pardon me.

Question



Q. by Sir Hugh Palliser. Do you particularly take upon you to swear the Formidable did not repeat the signal?

A. I do believe she did not. I did not see her.

Witness. As I am going with Sir Edward Hughes to the East Indies, I should be glad to know if there is any reason for my further attendance.

Court. None.

Withdrew.

Mr. ROGERS, Secretary to Admiral Keppel.

Q. Was you not appointed by me to take minutes, not only on the 27th of July, but during last war?

A. I had the honor of attending you the whole of last war, and likewise on the 27th of July last, and it was the greatest pride I have.

Q. What time did the fire begin on the 27th of July last?

A. The French began twenty minutes before eleven, by my watch.

Q. What time did I make the signal to engage?

A. At forty minutes past eleven o'clock.

Q. What hour did the English begin firing on the French, and with what ship did the Victory first begin her action?

A. A three-deck ship, with a flag at her main-top-mast-head; some few guns might be fired before, but the whole of our fire was reserved for that ship.

Q. Did I pass in the action near any other three-deck ship of the enemy?

A. There was another which followed up close to the other, and approached much nearer to the Victory; she was very close indeed, so close, that we thought she was coming on board.

Q. In what part of the French fleet was their two Admirals situated?

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A. Very near the rear.

Q. What number of ships wore with the Victory, when she endeavoured to get on the larboard tack?

A. I saw none.

Q. What time was the signal for line of battle made, after being on the larboard tack?

A. At two o'clock precisely.

Q. What time was the signal made to wear to the southward?

A. At ten minutes past three o'clock.

Q. Before the Victory wore a second time, had the Vice-Admiral of the Blue, or the center division, got into his station in a line of battle, or near the Victory?

A. There were no ships that could be said to be collected. The Vice-Admiral of the Red was to windward.

Q. After wearing to the southward, did you observe any of the British fleet to leeward repairing their damages, and did the van of the enemy seem to point towards them?

A. Yes, four, and the French seemed to steer for them.

Q. Did you see the Victory edge away two or three points to them to give them succour?

A. Yes, I did.

Q. Was the signal for line of battle ever hauled down, except the signal to shew plainer to come into my wake?

A. From my own knowledge I should say it was flying from two o'clock until after dark, but I understood it was hauled down for a short time to shew the signal for bearing into the wake plainer.

Q. Do you remember to have seen the signal for a line of battle a-head flying on board the Formidable any time that afternoon?

A. I never did see it.

Q. What

Q. What time did I send the Fox to Vice-Admiral Sir Hugh Palliser?

A. I cannot be exact as to a minute, but it was immediately after hailing the Milford, which I consider as five o'clock, or rather before.

Q. What orders did I send by the Fox frigate?

A. For the Vice-Admiral of the Blue with the ships of his division to bear down into your wake and take his station in the line, the Admiral waiting for him to renew the attack.

Q. Did you observe the Fox lying to, or near the Formidable?

A. I saw the Fox close under the Formidable's lee-quarter in about half an hour after she left the Victory.

Q. Did the Vice-Admiral of the Blue bear down in consequence of the message I sent by the Fox?

A. I did not see the Formidable make any motion to comply, although I gave great attention.

Q. At that time how far was she upon the weather quarter?

A. I cannot say.

Q. Was there any signal made at seven o'clock on board the Victory?

A. There were several pennants thrown out for ships to come into their station.

Q. How many of the Vice Admiral of the Blue's division did bear down in consequence?

A. There was some that did, but I cannot say how many.

Q. Were the French fleet seen on the morning of the 28th from the Victory?

A. I saw but three, one of which I kept my eye on most of the night.

Q. Did I make signals for ships to chase?

A. Yes, for four ships.

Q. Was

**Q.** Was it observed, after the signal was made, that some of them were crippled?

**A.** Yes, particularly the Prince George, she could set no sail on the fore-top-mast.

**Q.** Have you any recollection of the perplexity and trouble both to myself and you, in penning the letter of the attack on the 27th, so as not to pass any censure on the Vice-Admiral of the Blue?

**A.** I do perfectly well, you had great trouble in preparing the rough draught for me to copy so as to relate facts, and not censure the man you then thought your friend, and whom you at that time had no reason to doubt of his courage.

**Q.** by Admiral Montagu. Are you certain you did not see the signal flying on board the Formidable?

**A.** If it had been flying on board the Formidable, as I looked particularly for it, I think I must have seen it.

**Q.** Do you recollect ever hearing the Admiral at the time express his displeasure at their not obeying his signal, and declaring that he only waited for them to bear down and renew the action?

**A.** The Admiral expressed great anxiety at their not bearing down in my hearing, and I believe to most of the people on board, that he only waited for those ships.

**Q.** by Sir H. Palliser. At the time you say the message was given to the Fox—does your minutes express the time?

**A.** The time of speaking to the Milford, is marked at three quarters past four; the hailing the Fox succeeded so immediately after, that no express time is mentioned, but I am certain it could not exceed five o'clock.

**Q.** Are all the times regularly marked in your minutes of speaking to ships, except the Fox?

S f

A. The



*Admiral Campbell.] ( 318 )*

A. The Milford and Fox are both noted particular.

Q. You say the Formidable was a-stern upon the Victory's quarter, are you certain you could see the mizen peak open and clear?

A. The Formidable was in different situations, and in any one of them, I did not see the signal for the line flying.

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*February 2.*

*Rear Admiral CAMPBELL, second in command on board the Victory.*

Q. by Admiral Keppel. What day was the French fleet first discovered?

A. On the 23d of July.

Q. Were the French able to discover the force of the English that afternoon?

A. Certainly not, nor we their's.

Q. What was the situation of the two fleets on the 24th in the morning with respect to each other?

A. The French fleet at a great distance, and seemingly dispersed, upon our weather bow.

Q. Can you inform the court what signals I made that morning, and what were the objects of them?

A. The first signal was to form a line of battle, but on the enemy's going off, a signal was made to chace, and afterwards a signal to call in some of the chacing ships into their station.

Q. Do you remember Captain M'Bride's coming on board the Victory, on the morning of the 24th, and giving his remarks of what he had seen of the French fleet?

A. Yes, he informed you that he had seen part of the French fleet disabled by a heavy gale of wind, and that he was in hopes of cutting off one of them, if you chaced, or of bringing on an engagement.

Q. Do

Q. Do you recollect my orders about the Elizabeth?

A. Yes, after you ordered Captain M'Bride to chase that French ship, you desired him to hail the Elizabeth, and desire her to assist in the chase.

Q. Do you recollect two others of the French fleet that the English fleet got between, and separated from the French fleet?

A. Yes, two large ships which we in the morning saw on our lee bow, that upon the general signal being made to chase, they went off.

Q. If the French Admiral had ever intended to attack the English, was not the junction of those two ships with the main body, a temptation for him to bring it on that morning?

A. Most certainly.

Q. Do you recollect my making a signal for line of battle again that afternoon?

A. You did.

Q. Did not the French fleet avoid us from that time, until the moment we got into battle?

A. Yes.

Q. If you had commanded a British fleet equal to the French, and had been in their situation, would you have hesitated a moment to have bore down, and attacked an enemy in the position the English fleet was in?

A. Certainly not.

Q. If I had pursued in a line of battle, could I have kept my nearness to them, or even kept sight of them?

A. We were more than once in danger of losing sight of them, even in the manner we did pursue, and on the morning did lose sight of them for near an hour.

Q. Will you be pleased to inform the Court the particulars of the two fleets on the 27th in the morning, and what passed until the French fleet tacked to the southward?

A. At day break, the French Admiral was to windward for about three leagues on the weather beam of the English Admiral, the Vice Admiral of the Red on the weather quarter of the Victory with his division, the Vice-Admiral of the Blue a little before the lee beam, the Vice-Admiral with his main-sail up. About nine o'clock the whole French fleet were about.

Q. When the signal was made for the ships of the Vice of the Blue to chace, was there any greater indication of the French intending coming to action than on the preceding days?

A. No, by no means.

Q. What would have been the consequence, had I formed a line of battle instead of closing with the French fleet in the manner I did?

A. An increase of distance from them of more than when first seen.

Q. Would that have been the way to bring them to action?

A. Most assuredly not.

Q. Did the French ships, as we passed along, appear to be in any regularity?

A. The van appeared pretty well in a line, except as to point of distance, they were not at regular distances, the other part were far from being in a line.

Q. I am charged with standing at a great distance from the enemy before I wore; I beg you'll inform the Court whether it was practicable to wear sooner than I did?

A. No, it was not.

Q. When

Q. When I did wear, were any of the ships about me able to wear with me?

A. None of them that were near: I did not see any wear immediately.

Q. Had you any reason to believe from what you saw, that the Vice-Admiral of the Blue was left exposed, or liable at any time to be cut off?

A. No, I had not, at any time.

Q. When I hauled the signal for battle down, was it in your judgment proper to be kept a-broad any longer?

A. No, it was not.

Q. Did I make the signal for a line when I hauled down the signal for battle?

A. You did immediately on wearing to the larboard tack.

Q. Was that the most proper signal for collecting my fleet to renew the attack?

A. Most undoubtedly.

Q. I am charged with shortening sail while standing towards the enemy. I desire to know whether I had ships enough near me to advance faster than I did?

A. No. The whole time you was on the larboard tack standing towards the enemy, you had not one of the fourteen ships that ought to have been a-head with you. The Admiral of the Blue was a-head of the Victory when we wore, but instead of staying there to form in the line, he passed on the starboard tack a-stern of the Victory in a direct disobedience to the signal then flying.

Q. Where was the Vice-Admiral of the Red, and the ships of his division, at that time?

A. On the weather bow.

Q. Where was the French fleet at that time?

A. Right a-head of you.

Q. While I was on the larboard tack, did you see the French fleet in disorder?

A. No;



A. No; no more than all fleets must naturally be from changing from one tack to the other.

Q. Had I at any time, while standing on the larboard tack, a sufficient force collected to renew the fight?

A. I have already said, that during the whole of that time you had not more than four of the Vice-Admiral of the Blue with you that ought to have been a-stern.

Q. Was the signal for the line flying all the time I was on the larboard tack to collect them?

A. Yes, it was hoisted very soon after we got upon the tack, and was not hauled down afterwards.

Q. Under these circumstances did I not do the utmost in my power to *take, burn, sink, and destroy* the French fleet?

A. You did.

Q. I am charged with having wore at this time, and having led the whole of the British fleet from the enemy, I desire you will explain all you know of that transaction?

A. Seeing the French fleet wear and stand towards the British fleet, you ordered Capt. Sutton to acquaint Sir Robert Harland to form in the van, as we had no ships a-head of us in their station; the French seemed to edge away and point towards some of our disabled ships, upon which you ordered the signal for wearing, saying to me, Don't you see them make for those disabled ships, I must not receive an affront there, I must go and succour them, which you did.

Q. Was the signal for the line still kept flying?

A. It was.

Q. What sail did I carry?

A. I think double reefed top-sails and fore-sails, the French was just beginning to haul out as we were.

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Q. Do you recollect my ordering the Milford to Sir Robert Harland, to quit the rear, and form a-head, and at what time?

A. I forgot to mention that when Captain Sutton went away, he was ordered to acquaint Sir Robert Harland to form in the rear; Sir Wm. Burnaby was ordered at five o'clock, to go to Sir Robert Harland, to resume his station in the van.

Q. Do you recollect my ordering the Fox, at the same time, to go to the Vice-Admiral of the Blue, and what orders did I send?

A. I do, the message was, that you wanted for the Vice-Admiral of the Blue to come down with all expedition into your wake, in order to enable you to renew the attack.

Q. Did you add any thing to that message, as Capt. Windfor was going off?

A. I did, but I do not think Capt. Windfor heard me, as there was a great noise at that time on board his ship, and he was then increasing his distance from us.

Q. Do you recollect what the words were?

A. Yes, it was to tell the Vice-Admiral we had long waited for him.

Q. Do you remember my calling from my galley at the same time?

A. Yes, but I cannot say what you mentioned.

Q. Where was the Vice-Admiral of the Blue at this time?

A. Upon our weather quarter, at a considerable distance.

Q. After we were upon the starboard tack, did I not the whole afternoon mention to you my surprize that the Vice-Admiral of the Blue did not come down, or make the least effort to obey my signal?

A. You

*Admiral Campbell.]* ( 324 )

A. You frequently did, and one time I expressed myself, that the Vice-Admiral of the Blue was wounded, as I was certain that the Formidable could not behave so, if he was well.

Q. Did I not frequently declare, that I only waited for him to come down to re-attack.

A. You did.

Q. Did I ever seem to have given up my intention of re-attacking?

A. No.

Q. Do you recollect what degree of sail I made, to regulate the sail in the night?

A. Yes, at eight o'clock we took the third reef in the mizen top-sail, that it might not obstruct the sight, and we were under reefed top-sails all the night.

Admiral Keppel. May I beg the indulgence of the Court, to have that part of the Robuste's log-book read. It was read and mentioned, that the Robuste kept the whole night in her station as well as a disabled ship could do, the Admiral making much sail.

Admiral Keppel. After what Admiral Campbell has said, the affair of carrying sail needs no comment.

Q. You have heard the 5th article read, inform the court what you know concerning it?

A. On the morning of the 28th three ships were seen to leeward, which bore away with crouded sails directly, and a signal was made for the nearest ships to chace, which were the Bienfaisant, Prince George, Elizabeth, and I think the Duke; the Elizabeth afterwards told us she could not carry sail, and the Prince George we soon saw was in the same condition: after a short time, the Admiral called in the chasing ships: soon after we were upon the larboard tack, a signal was made for ships to set up rigging and refit.

Q. If I had pursued to the eastward, the wind and weather as it was, was there the least probability of coming

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coming up with the French fleet before they were in the port of Brest?

A. In my opinion there was not, especially as our disabled ships could not carry chasing sail, we could not have pursued in a body, the disabled part must have been considerably a-stern; what I mean by disabled ships is, they were crippled in their masts and rigging so as to prevent their carrying chasing sail.

Q. When I was on the starboard tack in the afternoon standing to the southward with my signal for a line, had it the least appearance of flight?

A. Certainly not.

Q. Did you ever see at any time of the day of the 27th of July, the signal for line of battle repeated on board the Formidable?

A. No.

Q. You have heard all the articles of the charge read. I desire you will mention to the Court any instance you saw or knew of where I negligently performed my duty on the 27th or 28th of July?

A. I neither saw any negligence either then or at any other time, I never sailed with any officer that was more diligent and attentive to his duty than you were.

Q. Do you recollect my giving, after sailing, this additional instruction:

" In the line of battle, the flag of the Commander in Chief is to be the principal object in point of direction for the whole fleet in forming their line?

A. Yes.

Admiral Keppel. I have done.

Q. by President. Do you know what time the Vice-Admiral of the Blue got into his station in the evening of the 27th of July?

A. Not while it was light enough at sea to observe the signal.

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Q Do



Q. Do you know whether the Vice-Admiral of the Blue carried distinguishing lights on his bowsprit-end that night?

A. I did not see him until the next morning.

*Cross-examined by Sir Hugh Palliser.*

Q. I would ask Admiral Campbell, if the Formidable was not lying within gun-shot of the enemy, until the signal for battle was hauled down?

A. I never saw the Formidable upon the larboard tack.

Q. When was the time you first saw her, as to enable you to say she was a-head of the Victory while standing that way?

A. A little before they both met, the Victory in the larboard tack, the Formidable on the starboard tack.

Q. Then, Sir, was it possible for the Formidable in that situation, to see the signal for the line on board the Victory, until she came so near as to open upon her masts?

A. The Victory was not the ship for the Vice-Admiral to look to; there was a gun fired when the signal was made, and the repeating frigate was the proper object for the Vice-Admiral to have looked at.

Q. Was not Captain Marshall of the repeating frigate, on board the Victory at the time we passed her?

A. I really do not know for certainty, he was on board us when we wore, but that was a quarter of an hour after the Formidable passed her.

Q. Then, Sir, when he was on board, was his frigate in readiness to have taken up the Captain's boat, and steer as the Victory did?

A. I don't

A. I don't know rightly.

Q. Supposing that to be the case, was not the signal on board the frigate equally imperceptible to the Formidable as it was on board the Victory?

A. The signal had been repeated long before Captain Marshall came on board the Victory.

Q. Will you please to recollect whether the signal for wearing was not flying at the ensign-staff before the Formidable came within length of her?

A. I cannot say positively.

Q. Do you recollect, that at the time the Captain of the frigate left the Victory, it was when she was actually wearing?

A. I only recollect his being on board from the circumstance of his being on the quarter-deck when we hauled up our fore topsail.

Q. I will ask you, as you are not certain whether the signal for wearing was out, whether you have not been very precipitate in charging the Vice-Admiral of acting in direct disobedience of orders?

A. No, I do not; for the signal for forming a line had been out for three-quarters of an hour, and even if the signal was out for wearing you was equally disobedient, for you should not have wore until the Victory did.

Q. Do you mean to say, Sir, even if I could not see the signal was out?

A. I never meant to charge any man with disobedience of an order he never saw, but I am positive it might have been seen if properly looked for.

Admiral Montagu. This does not appear to me to have any thing to do with the trial of Admiral Keppel.

Sir Hugh Palliser. It certainly has, if Admiral Keppel means to justify his conduct by my neglect.

*Q.* by Sir H. Palliser. Was it impossible but the *Formidable* must have seen either of those ships signals?

*A.* I think where two ships are situated one wide of the other and to windward, the signal must certainly be seen on board one of them.

*Q.* by Admiral Arbuthnot. Could you have seen the signal on board the *Formidable* when she passed you, if it had been flying?

*A.* Certainly I could, as I was able to see all over her; the signal was not flying on board the *Formidable* when she passed.

*Q.* by Sir H. Palliser. Did you not see it fly on board the *Formidable* soon after?

*A.* No, I never did the whole afternoon, although I frequently looked for it. I saw a blue flag at her mizen peak for ships to bear down, but not the signal for line of battle.

*Q.* Did not the *Victory* wear very near the *Formidable* a-stern and to leeward?

*A.* I have already said we passed to leeward of the *Formidable*; I cannot say what distance.

*Q.* At the time you say the blue flag was hoisted, was it not within half an hour after the signal for wearing?

*A.* To the best of my recollection it was not within an hour after we had wore.

*Q.* Then suppose it to be within half an hour, what distance could the *Formidable* then be from the *Victory*?

*A.* That must depend upon the course she steered, and the rate she sailed.

*Q.* Was not the *Formidable* and some of the *Vice* of the *Blue* the last ships that came out of action?

*A.* They were.

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*Q.* Is the hour and minute of the delivery of the message to the Fox frigate down in the minutes of the Victory?

*A.* I have always understood it was, I have read it in one of the minutes myself.

*Q.* Did the Victory ever lay too that afternoon?

*A.* No, we kept the same sail until eight o'clock at night.

*Q.* Was it not known at twelve o'clock at night on board the Victory, that the French fleet had bore away?

*A.* No, not until day-light, and it was a matter of surprize then to every body.

*Q.* Were any frigates stationed between the two fleets that night to observe the motions of the French fleet?

*A.* No. Nor do I know of any good that could have arose from a thing of the kind if it had, for had the Admiral known of the French fleet going away in the night, he could not have prevented it; for as signals had been so ill obeyed by the Vice-Admiral of the Blue in the day, there was but little probability of their being obeyed in the night, and in the morning there was great part of his fleet laying to windward of him.

*Q.* Was not the Duke a remarkable heavy sailing ship?

*A.* When I mentioned the Duke's signal, I gave a reason for it; we found many of our ships crippled in their masts, and we had good reason to believe she was not much crippled.

Withrew.

Captain MARSHALL of the Arethusa Frigate.  
Questioned by Admiral Keppel.

*Q.* Did you see the signal for line of battle flying on board the Victory, after she was on the larboard tack?

*A.* In



*Capt. Faulkner.]* ( 330 )

A. In my evidence I have said, I did, and by my minutes I find it did.

Q. Did you keep it abroad so repeated all the while I was on the larboard tack?

A. I think so.

Q. Did you see the Formidable when I was standing on the larboard tack, and how was the Arethusa situated?

A. On the Formidable's weather-quarter.

Q. Was the signal then flying on board the Arethusa?

A. I think so. I always kept the signal out as long as the Admiral did.

Sir H. Palliser. When did you receive notice to attend?

Admiral Keppel. I will answer for him, it was just now; since Admiral Campbell left the Court.

Admiral Keppel. I beg leave to know whether my accuser admits, denies, or puts me to my proof of a letter in the Morning Post, signed H. Palliser?

Sir H. Palliser. I admit it to be mine.

Captain FAULKNER of the Victory.

Q. by Admiral Keppel. What would have been the consequence if I had formed a line of battle on the 27th, instead of closing with the French fleet as I did?

A. That they never would have been brought to action.

Q. What part of the French fleet did the Victory begin the action with?

A. She fired some shot into a ship near the French Admiral, but began close engagement with the Bretagne, in order to reserve the fire for her.

Q. Was your ship's company in good order, obedient, and observing, that day?

A. They

A. They were in every respect.

Q. Was the center of the French fleet, as we came up, in appearance to you in any regular order?

A. No, not in regular order, they were in that order that is nearest a line, but not so as an officer could call a line, who has been used to see a line.

Q. Was there more than one French Admiral near the Victory?

A. There was only one ship between the Bretagne and another French Admiral, in a three deck ship; they kept their wind as close as ships could do; the fourth ship from the Bretagne began her fire upon the Victory, when she could scarce reach her.

Q. I am charged with standing to a great distance from the enemy before I wore to stand towards them again; I desire you will inform the Court whether it was practicable to wear sooner, and whether any of the ships of my division were able to wear with me?

A. The Victory wore as soon as possible, and sooner than any of the ships with her could.

Court. Mention some of the defects of your ship?

A. A large shot through the center of the main mast about eight feet above the quarter deck, another above; the mizen had a large shot through the center, about eight feet above the poop; the foremast shot through; main-yard shot in the weight of the slings; mizen-yard shot in the lower arm so as to make it necessary to be cut off; the gib-boom shot about three feet above the cap; main-top-sail-yard shot; two of her lower deck ports shot very much; shots in the hull a vast number; starboard fore-tacks, sheets and bowlings, fore top-mast stay, fore-sail, one of the gammonings of the bowsprit, six fore-shrouds, two fore-gib blocks, fore top-sail sheets, main top-mast stay, main preventor stay, two fore top-mast back-stays, seven main shrouds, five main topmast shrouds, the main trusses, the fore mizen shrouds,

shrouds, the mizen top-mast back-stays, our top-fails were much shot, particularly our main top-fail, the running rigging almost to pieces, however in proportion to the other damages.

Q. Had you reason, from what you saw, to think that the Vice-Admiral of the Blue was at any time exposed to be cut off?

A. No.

Q. Do you recollect when the signal for battle was hauled down?

A. While the Victory was upon the starboard tack.

Q. Was the signal made for the line immediately after the larboard tack, and was it kept flying until she got upon the starboard?

A. It was.

Q. Had any ships got into their station at that time?

A. Those that should have been a-head after, were not, those that were a-stern were probably near their station.

Q. Was my main top-fail, being unbent, while standing towards the enemy in the afternoon, any detriment to the service at that time?

A. Quite the contrary, it served to let many ships come up in their station.

Q. After we had got up a new main top-fail, did you, or any of the officers in the ship, think the Victory was not in a condition to re-attack.

A. By the time the main top-fail was replaced, the rigging was mended, and the powder of the different magazines was replaced ready for action.

Q. Had I then sufficient force with me to stand as towards the enemy, to interrupt their forming a line?

A. I am sure you had not.

Q. Did I keep the signal for line of battle flying to collect and form the ships?

A. You did.

Q.

Q. What sail did I carry on the starboard tack ?

A. After the main-top-sail was bent, double reefed top-sails, fore-sails, mizen and mizen-stay-sail.

Q. Do you recollect Sir Robert Harland coming into the rear with his division, whilst we were on the starboard tack ?

A. I do.

Q. Do you recollect my ordering him to quit the rear, and form a-head ?

A. About, or a little before five o'clock, the signal was made for the Milford and Fox to come within hail, the Milford came. I directed her to go to Sir Robert Harland, and order him to make sail and form a-head.

Q. Do you recollect my ordering the Fox, at the same time, to go to the Vice Admiral of the Blue ?

A. I recollect her coming upon the other quarter of the Victory, and she was hailed by some person from the stern gallery. I did not hear the message, but perceived the Fox make sail to windward, and carried a press of sail.

Q. by Admiral Arbuthnot. How long after the Milford went away ?

A. About five or seven minutes, not more, the position of the Milford brought her up first, otherwise their signals were thrown out together.

Q. Where was the Vice Admiral of the Blue at that time ?

A. From two to three points abaft the Victory's weather beam, about two miles out.

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*February 4.*

Continuation of the evidence of Capt. FAULKNER, of the Victory.

Q. by Admiral Keppel. Did you observe the Formidable's fore-top-sail unbent in the afternoon of the 27th ?

U n

A. I did,



A. I did, it was unbent four hours.

Q. Did you ever understand I had given up the design of re-attacking the enemy that afternoon?

A. Quite the contrary.

Q. Did you observe any effort (to obey the signal) on board the Formidable after the Fox went to her?

A. I did not, either before or after the Fox went to her.

Q. Did you, at any time in the afternoon, see the signal for line of battle repeated on board the Formidable?

A. I did not; I saw it repeated on board the Arctusa, which was upon the Formidable's lee-bow.

Q. Was the Formidable so as for you to observe her lee ports one from the other?

A. I looked at her many times that afternoon with my glass, and could, if wanted, have counted her guns.

Q. In the evening of the 27th, what sail did I establish for the night?

A. Treble reefed top-sails, fore-sail, mizen and mizen-stay-sail, at the usual time of day closing.

Q. Was the distinguishing lights burning all night?

A. I gave orders that every socket should have a candle that night; we usually burnt but three in a lanthorn, but that night we burnt four candles in each light, besides we carried an exceeding good light at the bow sprit end.

Q. Was there any increase of sail in the night?

A. None.

Q. Did you see the French fleet bear away, and go off in the night?

A. I did not. It was reported to me about eleven, that rockets were seen; I then came upon deck, and the French appeared by their lights to be as we left them at dark; I was on deck four or five times during the

the middle watch, and still saw lights to leeward in different places.

Q. On the morning of the 28th, what part of the French fleet were seen?

A. Three sail, the northern-most of which I thought was a line of battle ship, the southern-most a large frigate, and the other a small frigate.

Q. Did I send any ships to chase them?

A. The signal was made for the Prince George, Bienfaisant, and Elizabeth to chase to the N. E. as they then bore from us rather to the N. of the E.

Q. Was it not soon after discovered that the Prince George and Elizabeth were too much crippled for chaceing?

A. Yes, they hailed the Victory, and accounted for their not carrying more sail; the Prince George complained of her fore-mast, the Elizabeth of her main-top mast.

Q. If I chased the French fleet, was there any probability of my coming up with them before they got into Brest, the wind and weather as it was, and the ships crippled as they were?

A. Not the smallest, if there had, I am certain you would have pursued them.

Q. When the fleet brought to with their heads to the northward, how many ships made signal to set up rigging?

A. I suppose from ten to fifteen at least.

Q. You have heard all the articles of the charge read, therefore I desire you will inform the court of what, and in how many instances you saw me negligently perform my duty on the 27th or 28th of July?

A. I cannot state any instance wherein the Admiral did not conduct himself like a brave and able sea officer.

Q. Did I not send you with my public dispatch to London?

A. You did.

Q. Did I entrust you with any message to the Earl of SANDWICH?

A. Yes, you did, and this is it, which I beg leave to read. "Give my compliments to Lord Sandwich, tell him, I have more to say to him than I think is proper to put in my public letter; if it is his Lordship's pleasure to ask any public questions I am ready to answer him." This message I delivered twice to his Lordship.

Sir Hugh Palliser. I have no questions to ask Capt. Faulkner.

Withdrew.

Captain STONEY, late Second Lieutenant of the Victory.

Q. Had you the morning watch of the 27th of July?

A. I had.

Q. Do you recollect the signal being made for several of the ships of the Vice Admiral of the Blue to chase?

A. Yes.

Q. What sail was the Formidable under at that time?

A. Fore-sail, treble reefed top-sails, mizen and mizen-stay-sail.

Q. What sail had the Victory at that time?

A. Courses, treble reefed top-sails, mizen and mizen-stay-sail.

Q. Did your top and other distinguishing lights burn well?

A. They did, they had been well cleaned for the purpose.

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Q. Did you see any rockets thrown up from the French fleet?

A. I did, rather before eleven o'clock.

Q. Did you not see several lights to leeward after that?

A. I did, which I took to be squibs.

Withdrew.

Lieutenant CALDER, Lieutenant of the Victory.

Q. Do you recollect a message sent by the Fox to the Vice Admiral of the Blue, on the 27th of July in the afternoon?

A. I do.

Q. Can you say at what time of the day it was?

A. From the height of the sun I should suppose between four and five. I did not observe by my watch, not having it about me.

Q. Were not the men under your command in the best manner as to obedience and alertness?

A. They were.

Withdrew.

The Hon. Capt. GEORGE BERKELEY, late Lieutenant of the Victory.

Q. Do you recollect the time the Fox was sent to the Formidable on the 27th of July?

A. I came upon deck, and asked the Quarter-Master what o'clock it was? He answered me it was after one bell, or almost five o'clock. I was then shewn the Fox, standing to windward towards the Formidable, with a message, as I was told, from the Victory, for the Vice Admiral of the Blue, and the ships of his division, to bear down into the Admiral's wake, as he waited for him.

Q. What watch had you on the night of the 27th?

A. The middle.

Q. Did



Q. Did you see the lights of the French fleet ?

A. The officer I relieved show'd me the French lights about two points a-bast the beam : I kept my eye upon them the whole watch ; when day-light broke, I perceived but two ships where the lights had appeared, and soon after a third, a great way a-stern.

Q. What sail was the Victory under, during your watch ?

A. Treble reefed top-sails, fore-sails, and mizen, and I believe the mizen-top-sail was taken in to shew the lights in the main-top, and we carried our helm a-lee the whole watch.

Q. Were the distinguishing lights kept burning well ?

A. They were, particularly well, as more lights than usual were added to them : I went aft to see that the stern lights were kept in proper order.

Q. Were the people where you was quartered in good order, obedient and alert ?

A. They were particularly so, more than I ever saw in any ship I ever was in.

Withdrew.

Sir JACOB WHEAT, First Lieutenant of the Victory.

Q. Do you recollect the Fox being sent to the Vice Admiral of the Blue in the afternoon of the 27th of July, and at what time ?

A. I perfectly well remember standing by the Admiral when he ordered a frigate to be sent to Sir Hugh Palliser, to tell him that he only waited for him and his division to come down and renew the action. I cannot speak positive to time within ten minutes, but I am certain it was about five o'clock.

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Q. Were the people under your command soberly, orderly, and obedient?

A. Perfectly so.

Withdrew.

Admiral Keppel. I beg leave to call a witness which is rather out of the line I meant to pursue, but as the gentleman is apt to be troubled with the gout, I hope the Court will excuse it. I therefore shall call

Sir JOHN LINDSAY, K. B. Commander of the Prince George.

Q. From the moment of my first seeing the French fleet until the time of action, did they ever seem willing to come to action, or did they avoid it?

A. On the close of the evening of the 23<sup>d</sup> they got about twelve ships formed and then stood towards the fleet and passed to leeward; the next morning we saw them to windward forming a line: the Admiral made a signal for a general chase, and if they had an inclination for battle they could have commanded it then, and would not have suffered us to separate two of their principal ships; after that they always carried a press of sail to avoid.

Q. Did I always endeavour to bring them to action?

A. Yes, by carrying as much sail as you could, by keeping the fleet in a collected body: had you pursued in a line of battle you could not have come up with them, as they had the superiority in sail.

Q. Had you commanded a British fleet in the situation the French fleet was in, from the 23<sup>d</sup> of July, would you have hesitated a moment to lead down to battle, against an enemy in the situation the British fleet was in?

A. If an officer had hesitated a moment, he would have been unworthy of a command in the British navy.

Q. Do

Q. Do you recollect a signal being made early in the morning of the 27th of July, for ships of the Vice of the Blue to chase?

A. I remember a signal was made.

Q. Was there, at that time, any greater indication of the French fleet designing coming to action than on the preceding days?

A. There was not.

Q. What, in your judgment, was the object of that signal, and was it a proper one, under the circumstances in which it was made?

A. It appeared for the leeward-most ships to close with the center division, and I think if it had not been made, a great part of that division would not have come into action at all.

Q. What do you imagine would have been the consequence if I had pursued in a line of battle on the morning of the 27th, instead of bringing up the leeward-most ships by a signal to chase?

A. As the French were certainly avoiding us, we should have lost them entirely, and I am fully satisfied we should not have exchanged a shot with them that day.

Q. Did you see the French fleet getting upon the larboard tack, just before the action began?

A. There was a thick squall which obscured them from our sight for some time; when it was cleared up we saw them in the manœuvre of changing from one tack to another.

Q. Was not our getting into action very sudden and unexpected from the shift of wind?

A. After we got upon the starboard tack, the wind changed two points, which enabled us to lay up for them, and it appeared to me that they tacked their whole fleet together; their rear ships were obliged to bear down to get into the wake of the van, to form a  
line

line of battle ; it was so unexpected that I just got my long-boat cut away from the side, before the enemy began firing on me.

Q. What would have been the consequence if I had formed the line of battle at this time ?

A. It would have thrown the ships into such confusion, that if the enemy had bore down to attack, it might have been attended with very fatal consequences.

Q. As I am charged with advancing to the enemy without forming a line, I beg you'll inform the Court whether you think I was justifiable in doing so under the circumstances you have described ?

A. There was no alternative ; you must either fight the enemy as you were, or not attack at all ; it was a very animating fight ; it appeared bold, daring, and becoming the character of a British seaman to attack, and not regard a superiority over an enemy he was accustomed to beat, and the success justified the measure, as it threw the enemy into such a confusion, that I saw two French Admirals together, which could not be their station in a line of battle, and I fired upon three ships a-breast of each other.

Q. Did I make the signal for line of battle as soon as I wore, after passing the rear of the enemy ?

A. You did.

Q. I am charged with having stood to a great distance from the enemy before I wore ; as you was the next ship that wore after me, I desire to know if the fact be true ?

A. The Admiral wore before any other ship was able to do it. I was obliged to pass and wear under his stern, and it appeared to me to be done with great dispatch.

Q. Was the signal for line of battle, after I wore, the most proper signal to collect the fleet together ?

X x

A. I know



A. I know of no signal so proper.

Q. I am charged with shortening sail while standing towards the enemy, I desire to know whether I had sufficient force to advance faster than I did?

A. I don't remember of more than three or four ships that were close to the Victory; the Vice-Admiral of the Red was advancing, and it did not appear to me he had an adequate force to attack the enemy.

Q. Had I at any time, while on the larboard tack, a sufficient force collected to renew the fight?

A. You had not.

Q. Did you see the French fleet begin to form in the starboard tack, and had I then a sufficient force to prevent their forming?

A. You had not, for had the ships of the Red division advanced, they must have suffered very much before any assistance could have come to them, therefore it appeared very improper to have attempted it.

Q. I am charged with having wore, and stood directly from the enemy; I desire you will explain that manœuvre to the Court.

A. The French, when they had first drawn up the line, stood for the center division, but the Vice Admiral of the Red perceiving himself between the Admiral and the enemy, made them relinquish their intention of attacking the fleet; they then bore away, and pointed for some of our disabled ships that were to leeward; a short time after the Admiral made the signal for wearing, and bore down under an easy sail to support those ships.

Q. Did I make every necessary signal to form the line, and collect the fleet on the starboard tack?

A. You did.

Q. Was not the sail I carried proper for the support of the disabled ships, and was it such as could possibly

possibly prevent the Vice Admiral of the Blue from coming into the line ?

A. The sail was very proper for the disabled ships ; if the Victory had carried less, it would have been difficult for some ships to have kept their station ; and it does not appear to me that it was such sail as could prevent any ship from coming into her station in the line.

Q. Did not the easy sail I carried permit the French fleet to range up a-breast under their top-sails ?

A. It did.

Q. Had the manœuvre, as you have stated it, the least appearance of a flight ?

A. Not the least.

Q. Could not the French fleet have attacked the British fleet at any time they thought proper ?

A. It was in their power the whole afternoon.

Q. Did you see the Vice Admiral of the Red quit the rear to form a-head ?

A. I did.

Q. How did the Vice Admiral of the Blue then bear from you ?

A. At that time I was not in my station, having a-head of the Victory, expecting a perfect line would have been formed upon the Vice Admiral of the Red going a-head ; my signal as well as the Bienfaisant were made to resume our proper station after I got a-stern of the Admiral. I observed the Vice Admiral of the Blue about two miles to windward, a point abaft the weather beam.

Q. What course must the Vice Admiral of the Blue have steered to have come into his station ?

A. Nearly before the wind.

Q. Did any thing appear to you to prevent his bearing down ?

X x 2

A. He

A. He had then his fore-top-sail unbent, and appeared to me to be capable of making more sail.

Q. Did he make any effort to come into the line?

A. I saw none.

Q. How long was his fore-top-sail unbent?

A. About half past three, and continued so until after sun-set.

Q. Did you ever see him repeat the signal for line of battle?

A. I never saw it on board the *Formidable*.

Q. Can you assign any reason why the French fleet were not re-attacked that afternoon?

A. I suppose if the Vice Admiral of the Blue had led down his division, it would have been renewed.

Q. Do you think then I should have renewed the battle if the Vice of the Blue had led his division down?

A. I certainly do.

Q. You have heard the fifth article read, wherein I am charged with not pursuing the French fleet on the morning of the 28th, I desire you will inform the Court what you know of that matter?

A. The Prince George's signal, the *Elizabeth's*, the *Bienfaisant*, and *Duke* were to chace; the Prince George and *Elizabeth* were so much shattered in their masts, that they were not able to carry proper sail, therefore the signal was called in, and the fleet appeared so crippled the chace could not have been continued with any prospect of success.

Q. The fleet being crippled, the wind and weather as it was, was there any probability of getting up with the French fleet before they got into Brest?

A. There was not the least probability, and it might have been attended with danger to have carried the fleet on a lee shore.

Q. Your

Q. Your station, Sir, being near me, and as you was able to see the object nearly from the same point of view as I did, I desire you will state to the Court, in what instance you saw me (if you know of any) wherein I negligently performed my duty on the 27th and 28th of July?

A. I can state no such instance, for I saw none; you fulfilled your duty in every particular; I had the honour of serving under you last war, and had such great proofs of your valour and abilities, that you appeared to me one of the greatest sea officers this country ever produced; and the whole of your conduct on the late command, has convinced me that my former opinion was just.

*Cross examined.*

Q. by Sir Hugh Palliser. If the ships that were ordered to chace on the morning of the 27th, had been suffered to remain with their flag, would they not have gone into action with their Admiral, and have been able to support each other, and been less damaged?

A. Several of the ships whose signals were made, were to leeward of the Vice Admiral, therefore if the signal had not been made, they could not have had the advantage of the change of wind, therefore I apprehend could not have come into action at all.

Q. Can you name any ship that was to leeward except the Ocean?

A. I cannot mention their names, but as they were a-stern of the Vice Admiral when the signal was made, consequently they could not have had the benefit of the change of wind.

Q. Do you know that the Ocean was the sternmost, and most to leeward of the whole?

A. I cannot recollect at this distance of time.

Q. Do



*Q.* Do you know that the Ocean fetched into an action with the French Admiral ?

*A.* I do not.

*Q.* If the sternmost, and the most to leeward, did fetch into action with the French Admiral, could not the whole have done the same if they had signals to chase ?

*A.* If the leewardmost ship did fetch into action as described, I should suppose the others might.

*Q.* Did you see the Formidable directly when she came out of action ?

*A.* I did not see her until she passed to leeward of the Victory.

*Q.* Did you not see the French, when they first drew out of their line, stand for two of our ships that were close a-stern of the French rear ?

*A.* I did not take notice of that.

*Q.* Do you know that the Formidable did wear close to the French within gun shot ?

*A.* I do not.

*Q.* If the Admiral had wore himself within gun shot of the French, could not you and the rest of the fleet have wore at the same time ?

*A.* My rigging was so much cut, I could not wear at the time; and as the others did not wear, I suppose they were in the same condition.

*Q.* Is not a ship able to wear if all her masts, yards, and sails are standing, although her running rigging is cut, in moderate weather ?

*A.* Without braces and bowlings I do not see how a ship is to wear, and get upon a wind upon another tack.

*Q.* by the President. Do you think if the Admiral could have wore, it would have been prudent so to do, when the ships were following him, and still engaging ?

*A.* It

A. It would have been highly imprudent, as it must have thrown the ships behind in such confusion as to be liable to get on board each other.

Q. by Sir Hugh Palliser. Is not the sea wide enough for ten ships meeting to go clear of each other?

A. I have observed, Sir, that when ships in wearing set in confusion, it requires the utmost attention of an officer to prevent those accidents from happening; and it cannot be supposed that ships, after coming out of action, can be managed with that nicety as on other occasions.

Q. by Admiral Arbuthnot. If those ships had wore before they did, would they not every one been raked by the enemy by so doing?

A. They certainly would.

Q. by Sir Hugh Palliser. If the coming down the French line, you had seen the rearmost ship of the enemy re-attacked by the ships before you, would you not have run the risque of that short time in wearing, in order to have got upon the same tack to continue the engagement?

A. I do not suppose such a case could ever exist, as no officer a-head of me would wear and attack, and see me on the other tack; but if I *found* one in that situation, I most undoubtedly would wear at all risques and support him.

Q. If the ship that received the most damage in her rigging (or at least as much as any other ship) was able to wear immediately after coming out of action, why might not the rest have done so?

A. That much depends upon the nature of the damages: if the braces and bowlings are entire, she may be wore; but I do not see how a ship is to get upon another tack without them.

Q. If

Q. If the ship that had all her braces and bowlings cut, was able to run up sail by single ropes, or other expedients, might not other ships have done so to?

A. I think what one man could do another may.

Q. Don't you know that the Vice of the Blue division suffered more in having men killed, in their rigging and sails, than any other equal number of ships?

A. I believe the Prince George, which I commanded, suffered full as much, if not more, than any other ship of the fleet. I can only speak of what I saw, the Blue division did not appear more particularly hurt than the rest.

Q. I would ask if the latest ships that came out of action could be supposed to get into their station as soon as those that came out before?

A. Certainly not.

Q. What do you suppose was the Admiral's reason for ordering the Vice of the Red to take the place of the Vice of the Blue? Was it because the Vice of the Blue was just then come out of action?

A. The reason that appeared to me was, that they had not suffered so much, and therefore he placed those ships between him and the enemy, as no ships were there.

Q. Whilst the Red was laying in the station of the Vice of the Blue, could any ships of that division go into their station if they were able to do so?

A. They could not.

Q. When the Formidable lay with her fore-top-sail unbent, a point or two abaft the beam of the Prince George, did you set her by compass, or do you know the reason why the fore-top-sail had not been set?

A. I did not set her, neither did I know any reason why the fore-top-sail was unbent.

Q. Do

Q. Do you think the Admiral intended to renew the engagement at seven or eight o'clock in the evening, and risque a night battle, especially with the ships that came out of action last, which were much disabled, in preference to those ships that were not so much damaged?

A. When I got into my station, I think he did; I cannot speak to seven or eight o'clock. I should suppose he would not at that time.

Withdrew.

[Carried out in the arms of two men, being very ill of the gout.]

Captain WINDSOR of the Fox Frigate.

Q. When you received orders from me to go to the Formidable, was not the Fox obliged to get upon the contrary tack, and could you fetch the Formidable?

A. She was obliged to change her tack, and could not fetch the Formidable?

Q. Did you carry a great deal of sail?

A. I had fore-sails and top-gallant-sails, and my main-top-mast stay-sail set, and we were close hauled.

Q. Did the Formidable return you any cheers after you had returned her cheers?

A. To the best of my recollection she did.

Q. by Admiral Montagu. Do you know from what part of the Formidable the last cheer that was returned you was?

A. I think the fore-castle.

Q. by Sir H. Palliser. What part was the first cheer from?

A. The main and mizen shrouds.

Withdrew.



Lieutenant BERTIE of the Fox Frigate.

Q. Do you recollect the Fox being sent from the Victory in the afternoon of the 27th of July, to the Formidable with a message?

A. I do, the message was to go to Sir Hugh Palliser, and let him know it was his orders for him and his division to bear down into the Victory's wake, as he waited for that to renew the attack.

Q. Do you know whether the message was delivered to the Vice-Admiral?

A. Captain Windfor delivered it twice perfectly, and not being contented with that, he ordered me to take the trumpet, which I did, and repeated it twice more. The answer each time came from the stern gallery, and was, Sir, I understand you perfectly.

Q. Was the message you delivered to the same purport as the one I gave you?

A. Word for word.

Q. Standing from the Victory, was you able to fetch the Formidable?

A. No, we were obliged to tack, the Formidable was so much upon our weather quarter; we had a press of sail out; I remember the top-gallant-sails were out, and we stood by the halliards and lee sheets; I do suppose we went at the rate of six or eight knots, and we were going, I think, about half an hour.

Q. by the President. Who did you suppose answered you from the gallery of the Formidable?

A. I think Sir Hugh Palliser.

Q. Did you observe any manœuvre different on board the Formidable in consequence of the message?

A. I cannot say.

Withdrew.

Mr.

Mr. COURTNEY, Midshipman of the Fox.

Q. by Court. How old are you?

A. Between sixteen and seventeen.

Sworn.

Q. Had you not the charge of the care of bringing in a prize taken by the Fox frigate?

A. I had.

Q. Was you on board the Fox when the French and English fleets engaged?

A. I was.

Q. Do you remember the Fox being hailed by the Victory, and what message did she carry to the Vice-Admiral of the Blue?

A. The Fox left the Victory between five and six o'clock with a message.

Q. Was that the exact message delivered to the Formidable?

A. It was.

Q. Do you know if there was any answer given to it?

A. There was, but I do not recollect the words.

Withdrew.

Admiral Keppel. "Mr. President, may I be permitted to read a letter of Sir Hugh Palliser's inserted in the Morning Post, and ask him whether it is his."

Sir Hugh Palliser. "If you have any questions to ask me, I will answer them in a proper place."

Admiral Keppel. "I do assure the Court I never will call on Sir Hugh Palliser as a private gentleman."

Sir Hugh Palliser. "I will answer no questions here, but in any other place, I will answer any question."

Court. "We must put an end to this sparring at each other."

Admiral Keppel. "Mine cannot be termed sparring, for I declare I will not call on him as a private gentleman."

man, but as he has called for my letters, and published his story to all the ladies and gentlemen present in a news-paper, I think he could not have received so good an answer as this trial has produced."

Sir Hugh Palliser. I do object to my letters being read.

Captain MAITLAND of the Elizabeth.

Q. Had the French fleet it in their power to have attacked us from the time of first seeing them until the time of action?

A. They certainly had, as they were to windward.

Q. Had I pursued the French fleet in a line of battle, could I have preserved my nearness to them?

A. You could not.

Q. From the manœuvres of the French fleet on the 24th, 25th, and 26th of July, did you think they endeavoured to avoid a battle?

A. I certainly do.

Q. With a British fleet, in the position the French fleet was in on those days, would you have hesitated a moment of bringing on a battle with an enemy, situated as the British fleet were, the wind and weather as it was?

A. No! nor I dare say no British officers would.

Q. Did you find any inconvenience from want of succour in passing along the enemy's line?

A. None.

Q. Did you pass the rear of the enemy before or after the Vice-Admiral of the Blue?

A. At a quarter past one we were close to the Formidable, and a midshipman upon the poop, called out, saying, a ship was coming a-board on the weather-bow; as soon as he shot across me I put my helm a-weather, and as soon as the smoke was gone I shot up under

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under the Formidable's lee; the Formidable was then engaged with the two last ships in the French fleet, which I could not fire at without damaging the Formidable.

Q. Did it appear to you at any time, that the Vice-Admiral of the Blue was in danger of being cut off by the enemy?

A. No, not any time did I ever think so.

Q. Did you see four or five disabled ships of ours, which the enemy led up to in the afternoon, while we were on the starboard tack?

A. Yes, I saw them very plain.

Q. The sail the Victory was under on the starboard tack the whole of that afternoon, had it the least appearance of a flight?

A. Very far from it. I had quite a different opinion of it, when the Admiral was standing to the N. W. with a signal for line of battle, in the afternoon at two o'clock, I was lying with my head towards the enemy, to leeward of the fleet; I had wore with an intention to weather our line, and get into my station, just as I was going to put about upon the same tack the Admiral was, he made the signal to wear and wore, our helm was then a-lee, I let the ship come round upon the heel without hauling the sails, I then said to my first lieutenants and officers that were on the quarter-deck, that although the signal was out for the line, as the Red division were all a-stern, and the French seemed to intend cutting off our four disabled ships to leeward, I thought it my duty to stay where I was and lead down to endeavour to cut off the French van, which I did soon after the van of the French was within random shot, and bore away two or three points; we were then near our own disabled ships, and two of them made sail, the Courageux and Sandwich, I saw the Red division come forward to wind.



windward of the Admiral, I then tacked, went under the lee of our line and passed the Vigilant. This I imagine will satisfy the Court, I did not think we were running away.

Q. Do you remember on the morning of the 28th, after the signal was made to chase, that you hailed me?

A. I did, and told you both my main and fore top-mast were much crippled, we had a very large shot, which took away half the diameter of the main-mast, and the top-mast was sprung.

Q. Had I chased the French in the condition my fleet was in, do you imagine there was the least probability of coming up with them before they got into port?

A. No, not the least.

Q. You have heard all the articles of the charge read, I desire you will state to the Court in what instance you saw or knew of my negligently performing my duty on the 27th or 28th of July?

A. I saw none. I think you did every thing that a gallant and experienced officer could do on the occasion.

Sir H. Palliser. I have no questions to ask.

February 4.

Captain LAFOREY of the Ocean.

Q. by Admiral Keppel. Did I use every means, as an officer, to come up with the French fleet and bring them to action, from the first of their being seen until the time of action?

A. You did.

Q. Did you imagine they meant to come to action, or avoid it?

A. They certainly studiously avoided it.

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Q. Had you commanded a British fleet in the situation the French fleet was on the days previous to the action, would you have hesitated one moment of leading down to action against an enemy situated as the British fleet were?

A. I should not have thought myself justifiable had I omitted any one period of leading down to battle.

Q. Did the French on the morning of the 27th, shew more inclination of coming to action than on the preceding days?

A. They did not.

Q. Did you see a signal for several of the Vice of the Blue's division to chace to windward?

A. I did.

Q. Was the Ocean upon the weather or lee quarter of the Formidable when the signal was made?

A. She was wide upon the weather quarter, and a great way a-stern.

Q. Should you not have edged close to the Formidable, if the chacing signal had not been made?

A. I had kept my ship about a point away for half an hour, in order to get into my division, and encrease my sailing thereby, but I hauled my wind, upon the signal being made to chace.

Q. Could you have got so near action as you did, had not the wind luckily changed two or three points to the windward?

A. I should not, even where I was to have got into action, had not the wind shifted, as the Formidable weathered me out of gun-shot when she tacked.

Q. Did not the Formidable, and all the other ships of that division, where signals had not been made, make sail to close with the center, which made the enforcing the order to them needless?

A. The Formidable made sail soon after the signal was made, but I cannot speak of others.

Q. If

Q. If I had kept my line on the 27th of July, do you think I could have brought the French fleet to action that day?

A. You could not, unless the French had bore down upon us, which they did not shew the least disposition for.

Q. How was your ship situated when the action began, with respect to the Formidable?

A. I fetched up just under the Vice-Admiral's lee bow, and I had just room to engage within three of him; the Ocean came out of action about half past one o'clock, and when the firing ceased I was about two or three cables length from the Formidable.

Q. Did the Vice-Admiral at any time appear to you to be liable to be cut off?

A. The French passed him on the contrary tack, and as none engaged him, I cannot think he was in danger.

Q. At what time did the Victory cross you upon the larboard tack, standing towards the enemy?

A. About half an hour after I came out of action.

Q. Can you inform the Court how many ships were formed with the Victory on the larboard tack, when you passed her on the starboard?

A. I am certain there was none a-head, neither do I remember to have seen any near a-stern.

Q. How soon after you passed the Victory was you able to wear upon the larboard tack?

A. I wore upon the larboard tack about half past two o'clock.

Q. Did you hail the Worcester after you came out of action, and was you at that time to the southward or northward of the Victory?

A. I hailed her while I was wearing, I was to southward of the Victory, and had told the Worcester to get out of my way; she replied, you are clear enough.

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Q. What tack was the Worcester upon when you hailed her?

A. Starboard.

Q. Did you observe the signal for line of battle flying on board the Victory the whole afternoon?

A. I saw it flying, and do not recollect it being hauled down.

Q. How soon was the Ocean ready to renew the action?

A. At half past two o'clock, when I wore.

Q. Was your ship in a condition to obey the signal?

A. She was.

Q. Then, Sir, why was not the signal obeyed?

A. Because I did not think myself justifiable in going down before the Vice-Admiral did; I waited in constant expectation of his going down, until I saw my particular signal made on board the Victory, then I bore down immediately.

Q. How was you then situated with respect to the Formidable?

A. A-stern of the Vice-Admiral, and on his lee-quarter.

Q. How many knots did the Ocean go upon a wind that afternoon?

A. Until about ten o'clock at night, she went about two knots; from that time, she went from two to three knots, as I was obliged at that time to haul my main tack on board, as we had fallen down so much upon the French line; we had close reefed top-sails and fore-sail set.

Q. After the Admiral stood to the southward, upon the starboard tack, in the afternoon, and although the French fleet was a-stern of him, had it to you the appearance of a flight?

A. Not in the least.

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Q. Did the Vice-Admiral of the Blue, in the afternoon, repeat any signals made from the Victory?

A. I saw the blue flag at the mizen-peak, but no other; others might be made, but I saw none.

Q. Did you see the blue flag at the mizen-peak, before or after your particular signal was made to come down?

A. Before.

Q. Did the Vice Admiral, when he made that signal, make any appearance of bearing down himself?

A. I saw none.

Q. Did you imagine the signal meant to keep in his wake, or bear down into the Victory's?

A. I have answered that in a former question.

Q. Had you from my motions an idea that I did not mean to renew the action that afternoon?

A. I had not.

Q. Had the Vice-Admiral of the Blue led down his division when the signal was made, was there not day light sufficient to renew the attack, and did there appear to you any reason that could prevent it?

A. If the line had been formed by six o'clock there was day-light sufficient, and I know of no other impediment.

Admiral Montagu. When the French had formed their line after the action, could they not have brought the English to action if they had been disposed so to do?

A. They certainly could, for I observed three of the French line laying up for the Ocean, therefore we prepared to receive them when they came up.

Q. What part of the French fleet was seen on the morning of the 28th?

A. Only three sail, the nearest appeared a line of battle ship, the others were carrying much sail, and I could not form any judgment of them.

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Q. If I had chaced towards Ushant, on the morning of the 28th, in the condition the fleet was in from the action of the 27th, with the wind and weather, as it then was, was there the least probability of coming up with the French fleet before they got into Brest?

A. Not the least probability.

Q. What was your bearings and distance from Ushant at noon of the 28th?

A. Ushant bore E. N. E. half E. distance twenty-three leagues.

Q. You have heard all the Articles of the Charge read, therefore I desire you will state to the Court in what instance (if you know of any) wherein I negligently performed any part of my duty on the 27th, or 28th of July?

A. I know of none, I was confident then that Admiral Keppel had done every thing in his power to bring the French to action, and to continue it after, and I have remained in the same opinion ever since.

*Cross-Examination.*

Q. Was you near to the Victory when the signal was made?

A. No I was to leeward, and a-stern of her.

Q. Where was your station upon the larboard tack?

A. On the Vice-Admiral's lee-quarter.

Q. Where is the line a-head?

A. A-head of the Vice-Admiral, and next to him.

Q. What ship was next a-head of you, when you came into action?

A. The Egmont.

Q. Did you continue to follow the Egmont, during the action?

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A. The distance between the Formidable and Egmont was so little, that it was with great difficulty I could keep between them, without firing on them; and I once or twice was near being on board the Egmont. I was from the first to the last nearer the Egmont than the Formidable, and had difficulty all the time to fire clear of the Vice Admiral.

Q. Was you at no time near the Victory, and do you remember being very near the Thunderer, when she fired into the Egmont?

A. The action had began before I came into it, and the smoke was so great, that I do not recollect seeing any ship during the time I was engaging but the Egmont.

Q. Do you recollect the Formidable before action began, backing her mizen-top-sail (you being to leeward) in order to let you shoot a-head?

A. When I came up with the Formidable, the mizen top-sail was a-back, but I did not see it backed at first.

Q. After you had got a-head of her, did you observe whether she continued it to let ships a-stern come up with her?

A. I saw it a-back after I had passed, and attributed it to an act of gallantry in the Vice-Admiral, supposing he meant to reserve the whole of his fire for the enemy—that was the construction I put upon it at the time.

Q. Must not the Ocean have been constantly increasing her distance from the Formidable, unless she also backed her mizen-top-sail?

A. The Ocean's mizen-top-sail was backed more than once, and her top-sails lowered, to prevent her from shooting too near the Egmont.

Admiral Arbuthnot. Do you believe, at any one time of the action, you was at a greater distance than three cables length from the Formidable?

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A. I never was farther, and when I said I was between two and three cables length from her, the distance to leeward, as well as being a-stern, must be included. I was not that distance in a straight line at any time.

Q. Sir, as it has come out in the course of the evidence on this trial, that the signal was made for seven ships of my division to chase, how many did that leave with me ?

Admiral Keppel. I apprehend the prosecutor has no right to tell a witness what has come out in evidence; he properly is to cross examine upon what I have asked, and nothing else: if he had questions to ask of the kind that he now mentions, why did he not call the witness before he closed his evidence. I do insist upon it, that it never has come out that there were signals for seven ships of his division to chase; the Shrewsbury made the seventh ship, and she belonged to the Vice of the Red division.

Sir Hugh Palliser. I look upon it I have a right to ask what questions I like.

Here an altercation took place between the accuser and the accused, upon which Admiral Montagu moved the Court to withdraw, to stop, as he said, what seemed a question between two lawyers, whether a question should be put or not. On their return, the Judge Advocate read as follows :

The Court have agreed, that the prosecutor in cross examining is to confine himself to such facts as have fallen from the witness on his first examination, and not dive into new matter, therefore the question on the minutes must not be put.

Sir Hugh Palliser. I think the prisoner did not confine himself in cross-examining my witnesses.

Admiral Arbuthnot. The mode of conducting a trial is for the prosecutor to call all the evidence  
he



he thinks proper to establish his charges, and the prisoner has a liberty of cross-examining them as to what they have delivered in evidence; then the prisoner calls all the proof he can of his innocence, and the prosecutor examines those witnesses to what they have said, and nothing farther.

Sir Hugh Palliser. I should suppose I have a right to ask any questions about ships of my division.

Admiral Montagu. I am willing to sit here until the day of resurrection to hear either party, but for God-sake, keep to the point.

Captain Cranston. I apprehend the prosecutor cannot examine the witness in support of the charge, as he has done calling evidence.

Q. Did the Ocean proceed in the same tack until she passed the Victory?

A. She did pass on the starboard tack until she passed the Victory on the larboard tack.

Q. When did you see the signal for the line on board the Victory?

A. When we passed each other in different tacks.

Q. Where would the station of the Ocean have been agreeable to that signal?

A. A-head of the Formidable, who should have been a-head of the Victory.

Q. Did the whole of the Vice of the Blue's division continue to pass the Victory after the action, while they were upon the starboard tack?

A. I cannot say.

Q. by Admiral Arbuthnot. Was your ship at the time she wore, in a condition to go immediately into action, and keep her station in the line?

A. I don't recollect any impediment to the Ocean going into action after she had wore.

Q. by Sir Hugh Palliser. When you came out of action, was you not in condition to engage immediately.

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A. The Ocean did not receive so much damage, as two frigates would have given in half an hour. We were scarcely warmed with what we had, I mean.

Q. Could you have gone into action immediately?

A. Yes, we could have fought, but could not manœuvre the ship as to wear and stay directly, as our sails and rigging was much cut.

Admiral Arbuthnot. As an able and gallant officer, I ask you whether, if I had had the command of a squadron, and you a pennant under me, and had seen, upon coming out of action, any omission in my conduct, which all mankind are liable to, should you not have thought it your duty, for the honor of the service, (my honor being out of the question) to have informed me what your opinion was, and how I could have remedied it?

A. Most certainly.

Q. by Sir Hugh Palliser. Is not that equally proper for the superior to inform the inferior if he sees any omission?

A. I think the obligation is reciprocal.

Q. What hour was it that you saw the three ships of enemy laying up for you?

A. Between seven and eight o'clock, after I was in the line.

Q. How near do you suppose the nearest of the three French ships on the morning of the 28th was to you?

A. About three miles abaft our lee-beam.

Q. Was the Formidable a-head or a-stern of your ship then between the Admiral and the Ocean?

A. A-head of the Ocean bearing down athwart her.

Withdrew.

Captain

Captain BRADLEY, of one of the Fire-Ships.

Q. Do you recollect what time you passed the rear of the French fleet on the 27th of July?

A. About twenty minutes past one o'clock.

Q. Did you see the Vice-Admiral of the Blue at that time?

A. Yes, I was a little before his lee-beam, and without the range of shot.

Q. Did you at any time observe the Vice-Admiral of the Blue, in danger of being cut off by the French?

A. I did not.

Q. When you passed the rear of the French, at twenty minutes past one o'clock, had the Vice-Admiral ceased firing?

A. No, he was engaging the last ship, and the Victory was then standing on the larboard tack.

Q. Had the Victory the signal for battle out?

A. I did not see it on board the Victory, I saw it on board the Queen.

Q. When the Vice-Admiral of the Blue came out of action, what ships of his division did you observe a-head or a-stern of him, and how near were they?

A. The Worcester close a-stern of him, and two ships a-head, but I cannot recollect their names.

Q. When you say you saw the Victory on the starboard tack, how far was she from you?

A. About a mile

Withdrew.

Captain EDWARDS, of the Sandwich.

Q. Had the French the power (if they chose) to give us battle from the day we saw them until the day of battle?

A. They had.

Q. Did I when I first saw them form my line?

A. You

A. You did.

Q. If I had pursued them in order of battle, could I have come up with them?

A. By no means.

Q. Did I from the first time of seeing them, as an officer, use every means of coming up with them?

A. You did.

Q. Did they seem to avoid coming to battle on the 24th, 25th, and 27th of July?

A. They did.

Q. If you had commanded a British fleet, situated as they were, would you have hesitated to lead down to battle?

A. By no means.

Q. Could not the French have brought us to action any of those days?

A. Certainly they could.

Q. On the morning of the 27th of July, did they shew any more intention of bringing on an action than the preceding days?

A. They did not.

Q. What would have been the consequence if I had formed the fleet in a line on the 27th of July, instead of closing with them as I did?

A. No battle.

Q. Was the French fleet in a regular well connected line of battle?

A. No.

Q. Did you observe one of the enemy's ships carry away her main yard by the Prince George or Sandwich while you was engaged?

A. I did, and lieutenant Buchanan, who commanded on the lower deck, told me, he flattered himself that he had pointed the gun that shot it down; I saw another ship with her mizen yard down.

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Q. Did you see the signal to wear soon after coming out of action?

A. I did not see it, as I was to southward of the Admiral, but I saw the Admiral wear.

Q. Was the Sandwich in condition to wear when you saw the Admiral had wore and was upon the lar-board tack?

A. She was not.

Q. Did you observe the Victory wear back again and lay her head to the southward, and what was your situation?

A. I did, we were stopping our leaks when the Admiral made the signal and wore; I ordered the ship to be wore; the carpenter came and told me the damages the ship had received under water were such that he could not by any means plug them, and repair them, if we wore and laid our head the other way. I asked him if they were material, he replied yes, the ship made much water; I told him to make dispatch, and let me know when he had compleated it; when the Admiral wore we were then in a situation repairing our rigging and bending our main and mizen top-sail.

Q. Did you observe any other ships about you disabled at that time?

A. Yes, the Courageux, Egmont, Robuste, and the Ramilies.

Q. After the Victory wore back, did you observe her point to you and the other disabled ships?

A. She did from the wind.

Q. Did that course enable her to near the enemy, or increase her distance from them?

A. Certainly to near the enemy, because at four o'clock when the carpenter said he had stopped the leaks and repaired the defects, I ordered the master to put the ship about; she missed stays, and I directly ordered the mizen to be hauled up, and the ship to be wore,

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wore, and we did wear within random shot of the van of the French fleet, and hauled our wind, and joined the Admiral; at four o'clock I observed the signal flying on board the Admiral to bear into his wake; at three quarters past four, I observed the signal for line of battle a-head, at a cable's length asunder; at half past five, for three particular ships being seen out of their stations; at three quarters past six, for several ships of the Vice of the Blue to make more sail. We passed so near to the Victory, that I received orders personally from Admiral Campbell to veer immediately.

Q. Did the motions and signals of the Victory give you any idea that the Admiral did not mean to renew the action on the 27th of July?

A. By no means, no.

Q. Had my manœuvres the least appearance of a flight from the enemy?

A. No. I have said, he was bearing down to them as I passed.

Q. Did you see any of the French fleet on the morning of the 28th?

A. Yes, three. One I took to be a capital ship, the other frigates, they were at the distance of about four or five miles.

Q. Was your ship in a condition to chase, if the general signal had been made for that purpose?

A. No, not to chase,

Q. Did you see any ships signals to chase?

A. No, for as they had ran away, I had done with my minutes.

Q. Then did you see any reason to believe we should have come up with them before they got into Brest?

A. No.

Q. State, Sir, to the Court, in what instance (if you know of any) wherein you saw me negligently perform my duty on the 27th and 28th of July?

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A, I cannot

*Capt. Walsingham.]* ( 368 )

A. I cannot state any, for I saw none.  
Withdrew.

The Hon. ROBERT BOYLE WALSHINGHAM,  
Captain of the Thunderer.

Q. Did the French fleet shew any intentions of coming to action, or did they always avoid it from the 24th of July?

A. They always avoided it, and you did your utmost to bring them to action; no man could do more.

Q. Had you commanded a British fleet, in the situation the French fleet was on the 24th, 25th and 26th of July, would you have hesitated a moment to lead it down to battle against an enemy situated as the English were?

A. Not a moment.

Q. What would have been the consequence, if I had formed a line of battle on the 27th in the morning?

A. There would have been no action.

Q. Did it appear to you to be the object of the French fleet, to have gone off to windward instead of coming to action, if they could have passed the English fleet far enough to windward?

A. I have not the least doubt of it.

Q. I desire, Sir, that you will inform the Court, whether you think I was justifiable in attacking the French fleet in the manner I did?

A. You certainly was, for you had no other chance of bringing them to action.

Q. Is the fact true, that I stood at a great distance from the enemy before I wore; you was near me and could see?

A. You wore so soon, that I had difficulty in following of you.

Q. Did

Q. Did I make the signal for line of battle as soon as I wore, and was that the most proper signal to collect my fleet together?

A. You made the signal, and it was the most proper that could be.

Q. As I am charged with shortening sail, while standing to the enemy, had I a sufficient force to advance faster than I did; or had I at any time, while on the larboard tack, a sufficient force collected to renew the attack?

A. You had not.

Q. Did you observe me lead down from the wind to support some disabled ships to leeward?

A. I did, and remarked to my officers, that I thought you bore down very unsupported.

Q. Was not the sail I carried, necessary for the protection of the disabled ships, and was it such as could prevent the Vice of the Blue from coming into the line?

A. I think it could not.

Q. What sail had you set to keep in your station?

A. My top-sails in general, sometimes my mizen-top-sail a-back.

Q. Was not that you had for a main-top-sail a mizen-top-sail?

A. It was.

Q. With the sail you have described, although the French fleet were a-stern, had it the least appearance of a flight?

A. No, Sir, I heard the charge with indignation, and I reprobate the idea.

Q. Did you see the Vice-Admiral of the Red leave the rear to form a-head.

A. I did.

Q. Was there not day-light at that time sufficient to have attacked the French fleet, and do you not think



think I should have renewed the fight, if the Vice of the Blue had led his division down?

A. There certainly was time enough, and as a strong proof that I imagined you intended renewing it that night, my hands were never from their quarters.

Q. Can you assign any reason why I did not attack the French fleet, while there was any day-light.

A. There was but one, and that was on account of your not being supported by the Vice-Admiral of the Blue.

Q. Did the Vice-Admiral of the Blue ever make any visible effort to come into his station?

A. I saw none.

Q. How long did you see the Formidable's fore-top-sail unbent?

A. Four or five hours.

Q. Did you observe any signal from that ship signifying his distress, as the twenty-second Article of the Fighting Instructions mention?

A. No.

Q. Did you see any ships called for the purpose of changing his ship, as the Article mentions, that I might know his distress?

A. No.

Q. Did you see the Vice-Admiral repeat the signal for the line of battle that afternoon?

A. No.

Q. Did you see the French fleet on the morning of the 28th?

A. I saw three sail to leeward, and I saw your signal thrown out to chase them.

Q. If I had made the general signal to chase to leeward, was there the least probability of coming up with the French fleet before they entered Brest?

A. I think not, because the French ships were not much disabled in their masts and sails, and the three ships

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ships we saw in the morning, set their top-gallant-studding sails

Q. State to the Court wherein (if you know of any instance) I negligently performed my duty on the 27th or 28th of July?

A. I know of none. I have always been taught to look up to you as a brave and gallant officer, a man of courage and ability. I never had the honour to serve under you before, but prejudiced in your favour as I was, your conduct exceeded my most sanguine expectations.

Admiral Keppel. I beg pardon of the Court, but as notice has been taken of the Thunderer firing into the Egmont, and the firing of one ship into another, is made part of my charge, I wish to ask how that happened?

A. The firing into the Egmont was occasioned by the Egmont's shooting up from the starboard quarter; when the smoke was cleared a little away, I observed her jib-boom near my main shrouds. I hailed her to back a-stern, which she did, and after that there was nothing of the kind happened. I beg leave to mention, that this was in the heat of action, when we were obscured by smoke, and not by confusion.

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*February 5.*

*The Honourable Captain WALSINGHAM Cross-Examined by Sir Hugh Palliser.*

Q. Was the ship you first began to engage a-head or a-stern of the French Admiral?

A. I think it was the Admiral himself; many ships fired at me whose shot fell short.

Q. During the time you was engaged, how was you situated with respect to the Victory?

A. I

*Capt. Clements.]* ( 372 )

A. I was a-stern of the Sandwich, who was a-stern of the Prince George, who was a-stern of the Victory, there I remained the whole time.

Q. What time did the Red division quit the station of the Vice of the Blue?

A. I think before five o'clock.

Q. Did you, after the action, take any notice of the Vice-Admiral of the Blue?

A. As soon as I was out of action, I went into my stern gallery and was much pleased with the method in which the Formidable engaged, it did honour to the officers and men.

Withdrew.

Captain CLEMENTS of the Vengeance.

Q. Did the French, from the first moment they were discovered, to the time of action, shew any disposition to come to battle?

A. No.

Q. Did I do my utmost to bring them to action?

A. Yes, I think you did.

Q. Had you commanded a British fleet, situated as the French fleet were, would you have hesitated a moment of leading down to battle?

A. No.

Q. What in your judgment would have been the consequence, had I formed my line on the morning of the 27th, instead of chacing as I did?

A. There would have been no action, and as the weather was squally, there was much fear of losing them.

Q. I am charged with not renewing the fight; I ask you whether I had a sufficient force any time of the afternoon for that purpose, while standing on the

the larboard tack, or sufficient force to prevent their forming a line?

A. You had not.

Q. I am charged with wearing a second time, and standing to the southward; I ask you whether that was not a necessary manœuvre for the protection of my disabled ships then laying to leeward, and for the collecting of my fleet to renew the battle?

A. It was, and was well executed by the Victory.

Q. Had it then the appearance of a flight?

A. Quite the reverse, it was wearing the enemy.

Q. If I had chased towards Ushant on the morning of the 28th with the English fleet in the condition they were, the wind and weather as you remember, was there the smallest probability of coming up with them before they got into Brest?

A. There was not.

Q. You have heard the whole of the charge read, therefore I ask you to state to the Court any instance, if you saw or know of any, wherein I negligently performed my duty on the 27th or 28th of July?

A. I have long had the honour of knowing Admiral Keppel, I always entertained the highest esteem for him as a man of honour, and the best of officers: I do not conceive it was possible for more to be done by the Admiral than was during the whole time of the French being in sight, to the time they ran away.

Sir Hugh Palliser. As I can only ask questions arising out of the evidence, I will not trouble Captain Clements.

Withdrew.

Captain M'BRIDE of the BIENFAISANT.

Q. Did you not on the 23d of July come on board the Victory in a small boat to make your reports of what you had observed, and what were they?

3 B

A. I did.



A. I did. I mentioned having seen three sail considerably to leeward of the others, one had her fore-topmast gone, another a main-top-sail close reefed down upon the cap, as I imagined much crippled; and the weather being very close, I thought the Admiral had not seen them.

Q. What orders did you receive from me in consequence of your report?

A. The Admiral observed, those three ships must be cut off, or the enemy must come down and support them, therefore desired I would go to Captain Maitland of the Elizabeth, and order him to chase and attack those two ships; notwithstanding he should make the signal for the line of battle, we were to proceed on, unless he made a signal to return.

Q. Was the weather such as to prevent ships from fighting their lower deck guns?

A. Certainly it was not; for any ship might fight her lower deck guns surely, when I could go in a fix-oared barge, and deliver my message as fast as the ships sailed.

Q. Did I not immediately make signal for a general chase to the northward, and did it not occasion a separation of two of their capital ships?

A. It did.

Q. If the French had intended coming to action, was not the prevention of the separation of those two ships a great temptation to bring it on?

A. Certainly it was.

Q. Did the enemy at any time shew a disposition to come to battle?

A. They did not.

Q. Did I use every means to bring them to battle?

A. You did, by carrying as much sail as would suffer the slow sailing ships of your fleet to keep up with you.

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Q. Would you, as a British officer, have hesitated a moment to lead down to battle a fleet situated as the French were, on account of the wind and weather, as it was on the 24th, 25th, and 26th of July, and had an enemy in sight situated as the English fleet were?

A. If I had, I should never deserve to have set my foot in this country again.

Q. At the time the *Victory* was standing to the northward, or at any time while she was on the larboard tack, did it appear to you that I had sufficient force collected to have attacked the French immediately upon wearing, or to prevent the French from forming a line upon the starboard tack?

A. You had not.

Q. Did you see the signal for line of battle on board the *Victory*?

A. Yes, within a few minutes after the signal for battle was hauled down, the signal for a line was hoisted.

Q. Did you see the signal for line of battle on board the *Victory* while she was on the starboard tack?

A. I did.

Q. Then, Sir, under the circumstance you have mentioned, when the fleet was standing to the southward with the line of battle flying, had it the smallest appearance of a flight?

A. It had not; and at the time it struck me as a manœuvre of a great and judicious officer to collect his fleet which were dispersed by the damages they had received in the action, and to cover five disabled ships to leeward; and Sir Robert Harland, taking the station of the Vice of the Blue, prevented the French from falling down upon us at a critical

*Capt. M<sup>r</sup> Bride.]* ( 376 )

moment, and doing us much damage while our fleet was uncollected.

Q. Could not the French have attacked the British fleet while standing to the southward if they thought proper?

A. If good fortune had placed us in their situation and they in ours, if we had not taken and demolished them, we ought to have been sent on board the *Justitia* ballast lighter at Woolwich.

Q. Did the motions and signals on board the *Victory* at any time appear to you as if the Admiral had given up all thoughts of renewing the action that afternoon?

A. Not in the least.

Q. Can you assign any reason why the French were not attacked that afternoon?

A. I apprehend you waited for the Vice of the Blue division to come down, agreeable to the signal then flying.

Q. Did the Vice-Admiral of the Blue come down?

A. He did not.

Q. If the Vice-Admiral of the Blue had come down even by six o'clock into his station, would there not have been sufficient light to have renewed the attack, and obliged them to have surrendered, or to have ran away before night?

A. It would certainly have determined whether they meant to stand their ground, or run away by day-light, as there was full two hours and a half day-light.

Q. Did you see any reason why the *Formidable* could not bear down?

A. I saw none, except his fore-top-sail being unbent, which was to my knowledge full four hours.

Q. Did he make any visible effort?

A. Not

A. Not that I saw.

Q. What sail did you carry during the night, to keep in your station?

A. Close reefed topsails, and went about two knots, or two knots and a half.

Q. Did you observe any motions of the French fleet, on the night of the 27th?

A. Not until a rocket was thrown up, after which a light was shewn every half hour, and a flash, like that of a musket, was frequently shewn until daylight: in the morning I saw three sail, one of which I suppose was a line of battle ship, the others I believe were frigates, the nearest to me was at about four or five miles distance.

Q. Was there any ship between you and the French?

A. None.

Q. Were there any signals made to chase them?

A. Yes, and mine among others; and I chased until I was called in, so if any others were between, I must have seen them.

Q. Could the chase have been pursued with any success?

A. As no ships could back me, I must (if I came up with them) be engaged with three, which I imagined was the reason of my being called in.

Q. If I had chased with the whole fleet in the condition they were in, was there the smallest probability of coming up with them before they got into Brest?

A. I think not, even if we had not been damaged, as they were so much a-head, and we had but 21 leagues to run, besides many of our ships were a twelve-month foul, and some two years. The French were much cleaner than we were.

Q. State



Q. State to the Court in what instance, if you know of any, wherein I negligently performed any part of my duty on the 27th or 28th of July?

A. I know of none, and I think Admiral Keppel realized every good opinion which his country ever formed of him, on those days.

*Cross-examination.*

Q. Have you not frequently passed along the sea in a cutter, when it was not proper for a ship to open her lower deck port?

A. I have, but that was not one of the days.

Q. Had it not blown very strong that night, and had not one of the French carried away her fore-top-mast?

A. It had blown strong, but I do not think that is any proof of the French carrying away their mast.

Q. What part of the French fleet did you engage?

A. Between the Valiant and Foudroyant, a-head of the Victory.

Q. Did you observe any ship fire into the Foudroyant?

A. Yes. I believe the French did.

Withdrew.

The Hon. JOHN LEVESON GOWER, Captain of the Valiant.

Q. When I made signal on the 24th of July for a general chase, was the weather such as to allow the Valiant to carry her top-sails?

A. I had my top-sails, top-gallant sails, and top-gallant stay-sails set, and continued them during the chase.

Q. Did I use every means to bring the French fleet to action?

A. They

A. They went off as fast as as they could, and we used every endeavour to come up with them.

Q. Had you commanded a British fleet in the situation the French fleet were in, would you have hesitated a moment of leading down to action against any enemy in the situation the English fleet was in on the 24th, 25th, and 26th of July?

A. I certainly should not.

Q. Did the French fleet on the morning of the 27th of July shew any greater indication of coming to action than on the preceding days?

A. They did not.

Q. What would have been the consequence if I had formed a line of battle on the morning of the 27th, instead of bringing up the leewardmost ships to chase?

A. The French would have got off without being brought to action.

Q. I am charged with standing to a great distance beyond the enemy, before I wore, and stood towards them again. I desire to know whether the fact be true?

A. It is not true, for you wore in about ten minutes after the firing ceased.

Q. Did I make the signal for the line of battle, as soon as I had wore?

A. Directly after you passed me, the signal was hoisted.

Q. Was it the proper signal to collect the fleet together?

A. I think so.

Q. I am charged with shortening sail instead of advancing to the enemy. I desire to know whether I had sufficient force collected to advance faster than I did?

A. They

A. The Valiant was not able to make sail for near an hour after I came out of action, and there were several ships a-stern of the Victory a great way off.

Q. Had I a sufficient force collected to prevent the French forming their line?

A. You had not.

Q. I am charged with having wore improperly, and of making sail from the enemy, I desire to know if the fact be true?

A. The French edged away, and pointed for four of our disabled ships, but when you wore, you stood to succour the disabled ships, and prevent their being cut off.

Q. Did I make every necessary signal to form a line, and collect the fleet on the starboard tack?

A. Yes, I think so.

Q. Do you recollect what sail the Victory carried upon the starboard tack?

A. Double reefed top-sails and fore-sail.

Q. Did not that permit the French fleet to range up with me under their top-sails?

A. It did.

Q. Had the manœuvres of the English Admiral the least appearance of a flight?

A. Not in the smallest degree.

Q. Could not the French fleet have attacked the British fleet any part of the afternoon?

A. Certainly they could.

Q. What distance was the Vice Admiral of the Blue from his station at five o'clock?

A. Broad upon the weather quarter, two miles and a half, or three miles from the Valiant.

Q. Did any thing appear to you to prevent his bearing down?

A. The Formidable's fore top-sails were unbent, but I saw no masts or yards gone.

Q. How

Q. How long was the fore top-sail unbent?

A. I never saw it bent, but it might have been bent towards eight o'clock.

Q. Did the Vice-Admiral make any signal to inform the Admiral he was disabled?

A. Not any that I saw.

Q. Did you ever see him repeat the signal for a line of battle in the afternoon?

A. I saw no other flag on board the *Formidable*, except the blue one at the mizen peak; there were some pennants in the evening.

Q. Can you assign any reason why the French fleet were not re-attacked that afternoon?

A. Until about four o'clock very few ships were with the *Victory*; from that time to night the rear division did not come down into their station, except two or three ships pretty late.

Q. Do you think I should have renewed the battle that afternoon if the Vice-Admiral of the Blue had led his division down?

A. From your very spirited behaviour before that I have not a doubt about it.

Q. Did you see the French fleet on the 28th?

A. Only three sail.

Q. Had I chased towards Ushant that morning, the wind and weather as it was, had I the least prospect of coming up with the French fleet before they got into Brest?

A. I think not.

Q. As you was next to me during the whole action, and afterwards, and had an opportunity of viewing objects nearly from the same point of view that I did, I desire you will inform the Court in what instance, if you saw, or know of any, wherein I negligently performed my duty on either the 27th or 28th of July?



A. I don't know any such instance: I then thought, and I now think, that your whole conduct was spirited, able, and great.

*Cross-Examination.*

Q. You say the Admiral, while standing to the enemy, had not a sufficient force collected to re-attack, please to account for the whole of the Admiral's division, and such of the Vice of the Blue as had joined him; I wish to know why they could not have supported him?

A. There were five sail to southward of me, one was a three deck ship, I think the Sandwich; the Elizabeth I passed, and she was on the starboard tack, and another ship on the lee-beam, standing to the southward; there were likewise two of the Vice of the Red, much disabled, standing to the southward; and my ship was between two and three miles from the Admiral, and every brace and bowling except the fore stay was gone.

Q. Was not the Red division the least engaged of any of the three divisions, consequently the soonest out, and least damaged, and therefore the soonest ready to engage again?

A. They were the soonest out, how much they were damaged I cannot tell.

Q. Are we to understand that the British fleet were so much disabled as not to be ready to renew the attack, as soon as the French were?

A. About four o'clock, many ships had got into their station, and I suppose got in as fast as they got to rights; after that we might have renewed the battle, had your ships have come down into their station; but, Sir, I don't pretend to know the reason why you did not.

Q. Was

Q. Was not, at four o'clock, the Vice of the Red in the station of the Vice of the Blue ?

A. Yes, but they soon after went a-head.

Q. Can you suppose any other reason that the Admiral ordered the Vice of the Red, into the station of the Vice of the Blue, than from seeing that the Vice of the Blue was just come out of action.

A. I don't know : the Vice of the Red was ordered there ; I can only say he was there ; you at four o'clock must have been a great while out of action ?

Q. Did you observe two or three French ships, directly after the action, lay their heads, and shape their course, for the Formidable ?

A. I do not recollect seeing them point as you say.

Q. What time did the Red division quit the rear ?

A. I think between four and five ; it was not long after I got into station.

Q. You say you do not recollect seeing the signal for line of battle on board the Formidable, I ask you whether the Blue flag you did see was not under the signal for line of battle ?

A. I am positive it was not when I saw the blue flag. I did not look at the Formidable the whole afternoon ; whenever I did look, there was no signal for line of battle.

Q. Are you certain you may not be mistaken at this distance of time ?

A. Upon my word, after what I have said, I think the question is very extraordinary. I again say, I did not see the signal for line of battle flying on board the Formidable.

Withdrew.

Captain JARVIS of the Foudroyant.

Q. Did the French fleet from the first of their being seen on the 24th of July, ever shew any intention of coming to action?

A. On the 23d I thought they did, but when they could discover the force of the British fleet on the morning of the 24th, I am certain they never did after.

Q. Did I do my utmost, and endeavour to bring them to action?

A. You used your most unremitting endeavours.

Q. Had you commanded a British fleet in the situation the French fleet were in, would you have hesitated a moment of leading down to battle against an enemy situated as the English fleet were, on the 24th, 25th, and 26th of July, on account of the wind and weather?

A. Any officer that had hesitated, would have been unworthy a command in the British fleet.

Q. Did the French shew any greater inclination to come to battle on the morning of the 27th, than on the preceding days?

A. They did not.

Q. What was my object, do you think, for making a signal for some of the leeward-most ships to chase?

A. To combine the Vice-Admiral of the Blue with the center division.

Q. What would have been the consequence had I formed a line that morning, instead of giving the signal for those ships to chase?

A. There would have been no action that day.

Q. Was not our getting into action with the enemy very sudden and unexpected, owing to a shift of wind?

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A. That was the principal event that made it.

Q. What would have been the consequence had I formed my line at that time ?

Q. You would have given the French time to form their line, instead of being attacked in the disorder they were in, or they might have got out of gun shot if they were disposed so to do ?

Q. Was I justifiable in your opinion of attacking ?

A. You certainly was.

Q. Is the fact true that I stood a great distance from the enemy before I wore to stand towards them again ?

A. It is not true.

Q. Did I make the signal for line of battle as soon as I had wore ?

A. You did.

Q. Was that the most proper signal I could make to collect the fleet together ?

A. It was ; and it was the signal that required the greatest obedience to be observed.

Q. Had I sufficient force to advance to the enemy faster than I did.

A. When I approached you on the larboard tack about three o'clock, you had but two or three ships with you, and the rest were at a considerable distance astern.

Q. Did you see the Formidable at any time on the larboard tack after the action ?

A. I did not.

Q. Did you see the French fleet wear and begin to form upon the starboard tack ?

A. I did.

Q. Had I at that time a sufficient force collected to prevent their forming.

A. You had not.

Q. I.



Q. I am charged with having led the British fleet from the enemy; explain what you know of that matter to the Court?

A. It appeared to me at the time that you had two great objects in view, the one was to give succour to four or five disabled ships, and the other was to let the Vice-Admiral of the Blue and his division get into their station and form a-stern of you.

Q. Could the sail I carried possibly prevent the Vice-Admiral of the Blue from coming into the line, and was it more than was really necessary for the succour of disabled ships?

A. The sail you carried appeared to me well proportioned to effect both these purposes.

Q. Had that evolution, or my subsequent conduct, the least appearance of a flight?

A. Very much otherwise.

Q. Could not the French fleet have attacked the British fleet any hour they thought proper that afternoon?

A. They could, and at some periods with great advantage.

Q. Where was your station in the line of battle, a-head on the starboard tack?

A. Next ship to the Victory.

Q. Did you get into your station and continue there?

A. I got in when you wore, and continued there.

Q. Do you think I intended renewing the battle if I could have formed my line?

A. I did, and as a proof of it I ordered my men up thinking it adviseable to speak a few animating words to them.

Q. What was the reason, do you think, that the battle was not renewed?

A. Because the Vice of the Blue and his division were nor in their station.

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Q. Did any thing appear to you to prevent his bearing down.

A. Nothing appeared visible to me except a fore-top-sail being unbent, which I observed unbent for four hours.

Question by President. Could he have got into his station under his main top-sail and fore-sail.

A. He might.

Q. How many points could he have kept away?

A. About four points.

Question by Admiral Keppel. Did the Vice Admiral of the Blue make any signal to shew he was disabled?

A. I saw none.

Q. Did you see him repeat the signal for line of battle?

A. I did not.

Q. Have you the bearings and distances on the 28th of July, with respect to Ushant?

A. Ushant bore N. 79 degrees E. distance 22 leagues.

Q. As you was next ship to me during the action, and had an opportunity of seeing objects from nearly the same point of view as I did, I desire you will state to the Court in what instance (if you know of any) wherein I negligently performed my duty, on either the 27th or 28th of July?

A. With great respect to you, Sir, and with great deference to the Court, I hope I shall be indulged with having that question put by the Court.

Q. put by the Court.

A. I think myself bound by the oath I have taken, to answer that question. I believe it is consonant with the practice of Sea Court-Martials. I cannot boast of a long acquaintance with Admiral Keppel. I never had the honour to serve under him before, but am happy

*Capt. Jarvis.]* ( 388 )

happy in this opportunity to declare to this Court, and all the world, that during the whole time the English fleet was in sight of the French fleet, he displayed the greatest naval skill and ability, and the boldest enterprise in attacking the French fleet on the 27th of July, which, with the promptitude and obedience of Vice-Admiral Sir Robert Harland, will be subjects for my future admiration and imitation as long as I live. He then gave an account of the defects of his ship after the action, by which it appeared, she was much damaged, particularly in her foremast and her rigging.

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February 6.

*Continuation of Capt. JARVIS's Evidence.*

Q. Did you see the French fleet on the morning of the 28th?

A. I saw three sail, and the man at the mast head said he saw eight sail stand to the S. E.

Q. Did you see any signal made to chase the three French ships?

A. I think I saw the signal for three ships to chase.

Q. If I had chased towards Ushant with the fleet, was there the smallest probability of coming up with the fleet of France before they entered Brest?

A. There certainly was not.

*Cross-Examined.*

Q. I think you said in your examination yesterday, the French did not shew any more disposition to come to battle on the morning of the 27th, than before; I therefore ask you, Sir, what made it necessary them to take seven of the Vice of the Blue's division to continue with the centre division on that day?

A. I have said in answer to that question, that the Vice of the Blue and his division were three miles and a half

a half from the Foudroyant, and full three miles to leeward of the Victory, going under a flow sail; that it was absolutely necessary to make a signal to chace to windward to bring them up, and the Vice-Admiral of the Blue seemed to accept of the signal, as he directly after made more sail.

Q. I think, if my memory does not deceive me, you stated yesterday the Blue division to be about three miles on the lee bow of the Foudroyant, now you seem to convey an idea, that they were totally to leeward?

A. I would not wish to convey any idea, but what is just; it is a common saying to mention when a ship is to leeward, that she is on the lee-bow; I don't mean to quibble upon words, what I mean is, to inform the Court the true position of the Blue division, and I say the Formidable was considerably out of her place, agreeable to her station in line of battle. I do not mean to take any advantage of you, nor say any thing in favour of the Admiral that is not strictly true.

Q. If those ships had been suffered to remain with me, could they not have gone into action when I did?

A. I am not a competent judge of that part of the fleet, but must beg leave to inform the Court what brought us into action, as the cause did not exist at the time the signal was made to chace. I would wish to fix it (which is really a fact) upon a particular shift of wind in our favour, which did not happen until four hours after those ships chaced.

Q. Take the trouble to look at your own ship's log-book, and inform the Court how much the wind shifted that morning by your log-book?

A. The book says, one point at eight o'clock, and from eight to twelve, two points.



Q. Do you think, Sir, that your recollection is preferable to the account on the log-book ?

A. I don't refresh my memory with log-books, neither do I place any stress upon log-book evidence; I will not swear to what another person puts down in a log-book, particularly at a period like that; what I swear is what I know, though I would not have a log-book under me altered upon any account.

[Here an altercation took place between Sir Hugh Palliser and the witness, which was put an end to by the Court interfering.]

Q. Did you ever know a Commander in the third post of a fleet have his ships drafted from him, and be left to go into action unsupported ?

A. Before I answer, I must beg leave to observe to the Court, that I do not know that fact did exist on the 27th of July; I never did know any such instance in any fleet.

Q. By the French fleet manœuvring, did it not bring them to leeward, and thereby give the English fleet a better opportunity of laying up with them.

A. I saw them wearing between eight and ten o'clock, and that most undoubtedly brought them something to leeward.

Q. by Admiral Arbuthnot. Could you fetch the van of the fleet when you came into action ?

A. No, a great part of the van passed me at the distance of random shot.

Q. by Sir Hugh Palliser. Was there not another manœuvre of the French fleet ?

A. Yes, during their being obscured by a thick squall, I imagined they meant to perform the same evolution they had perceived the British fleet do with success, and thereby get to windward of us, and avoid the action; but in performing it, some of them might stay, others did stay, and that I suppose brought them  
into

into the confusion we saw them in after the squall. This was my opinion at the time.

Q. In a distant view of a fleet changing their tack, does it not convey the appearance of confusion, as they, in performing the evolution, are some standing upon one tack and some upon the other?

A. It unquestionably does, but their disorder appeared until great part of them had passed me, for they were in no line.

Q. Can you say, while the French were on the star-board tack, after they had wore, they did not lead large?

A. I can speak no farther than saying, during the act of wearing they went large, after that I cannot say they led large.

Q. Can you say whether they did or no?

A. I cannot say.

Q. If the rear division had remained together, and had fought together, in a collected body, as the other Admiral and their divisions did, would they not have supported each other, have done more execution, have received less damage?

A. I do not know that any part of the question did really exist.

Q. Did not the ships that chaced by signal, by that means get farther from the Admiral of their division than they were before, and of course at greater distances from each other?

A. I did not know it existed at the time the Vice-Admiral of the Blue came into action, I was too attentive to my own ship.

Q. I think you said yesterday, while the Admiral was standing on the larboard tack, he had, at no period of time, a sufficient force collected to renew the attack, nor prevent the French forming their line; that the Admiral made the properest signal to collect

his ships, which was the signal for the line; I therefore ask, whether, while he was in that tack, he made a signal for ships to bear down, or for particular ships to make more sail, or for seeing ships out of their station?

A. I did not see the signals you allude to; had they been made there were very few ships at that time could have obeyed them. My ship I am certain could not.

Q. You say you saw the French wear and stand to the southward—do you think it was necessary to require an exact line of battle for attacking the enemy then, more than it was in the morning?

A. As the Admiral is charged with not collecting his fleet together in a line, nor keeping near enough to re-attack the enemy, I say that the signal for a line was the properest signal to collect his fleet, either to re-attack, or lead down upon the enemy, disabled as the fleet was.

Q. Then am I to understand, that the condition of the fleet was such as not to be able to re-attack the enemy, when they stood towards us, before they had formed their line?

A. The fact is, we did face the enemy.

Q. But, while they stood towards us, did we not wear, and stand from them?

A. We did wear; I described the object of that yesterday.

Q. Did you ever know, or hear, a British fleet turn their stern upon an enemy, after an engagement with an equal or inferior force, and after the enemy stood off from them?

A. I deny the fact in all its extent and meaning.

Q. Was not our stern towards them, while standing to the southward?

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A. I have explained the whole of that manœuvre yesterday, in answer to a question put to me, and will not explain it farther, unless desired by the Court,

Q. You said the French edged down towards four or five disabled ships, were not three of that number of ships of my division?

A. I did not, at that time, know what ships they were; I have heard since; I saw two of them join the center division afterwards.

Q. You said yesterday, that the sail the Admiral carried, could not prevent the Vice of the Blue keeping up with him in his station;—now, Sir, if the Formidable was at the distance of three miles, as you described, do you know whether it was occasioned by any neglect of the Formidable, that she remained at that distance?

A. I have not stated any such thing; I did not say the Formidable was at the distance of three miles,

Q. Did you know the condition of the Formidable at that time?

A. I never pretended to any such knowledge.

Q. Did not the Red division form a-stern of the Admiral?

A. Part of them did, at a considerable distance a-stern of me: I was a-stern of the Admiral in my station; they quitted that position about five o'clock.

Q. Was not the Vice of the Blue's division more damaged than any other division?

A. I cannot say, only from news-paper accounts; the Formidable undoubtedly received much damage, but not more than the ship I command, except in the numbers of killed and wounded; but I never mean to pique myself on the damage of my ship.

Q. Was not the Red division the first that came out of action?

A. They were.

Q. Is



Q. Is the fighting instructions that ships receive, signed by the Commander in Chief, or the Admiral of their own division?

A. I never was of any division but that of the Commander in Chief; my instructions are signed by him.

Court. This is a new matter, and contrary to the resolve of Court.

Q. by Sir H. Palliser. Was not the signal flying on board the Commander in Chief, a sufficient warrant for ships to get into their station as fast as they could, without the signal being repeated by the Vice-Admiral of the division?

A. I must beg the interposition of the Court, as this question seems to be meant for me to pass censure on the Captains of the Blue division.

Court. You may, or may not, answer it.

Q. You have been asked, whether the Vice-Admiral of the Blue made any signal of distress; I ask you, what signal do you think was applicable, at that time, for the purpose?

A. Though I am not accountable for what has been asked, I will repeat that I did not know the particular situation of the Formidable, neither did I ever pretend to know.

Q. by Court. Was the weather such, at that time, as a boat could live upon the water, and pass from one ship to another?

A. The best proof of that is, our long boat was then floating between the French fleet and ours, without any person to guide her; the weather was moderate enough for any boat to live.

Sir Hugh Palliser. Was you fired into by the Duke, or any other British ship, during the engagement that day?

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A. I never knew that the Duke fired a shot that day; no ship, except the French, fired into me.

Here Sir Hugh Palliser was putting another question very fast, before the other was read, upon which Admiral Montagu said, "Sir Hugh, pray stop, the Judge Advocate is full a mile a-stern, and all a-back."

Sir H. Palliser. I have done.

Q. by the President. I think you said you thought yourself bound by the oath you had taken to speak fully to every article of the charge; I therefore ask you, whether you know, as the forth article states it, of Admiral Keppel neglecting his duty from the 23d to the 29th of July?

A. I answered that very fully yesterday, but I am very ready to answer it again, and say, I do not know of any instance.

Q. Do you know if Admiral Keppel, at any time, as the fifth article states it, lost a glorious opportunity of doing an essential service to the state, and by losing that the honour of the British navy was tarnished?

A. I know of no such instance.

Captain KINGSMILL, of the Vigilant.

Q. I am charged with having advanced to the enemy on the 27th of July, without forming my line; what, in your judgment, would have been the consequence, had I not closed in with them as I did.

A. That the French fleet could not have been brought to action that day.

Q. I am charged with not advancing to renew the battle, after I had wore and stood upon the larboard tack; I desire to know whether I had sufficient force to advance farther than I did, or force enough to prevent their forming their line on the starboard tack?

A. You

*Capt. Kingmill.]*

( 396 )

A. You had not:

Q. Was not the signal for the line kept flying to collect them ?

A. It was.

Q. I am charged with wearing a second time, and standing from the enemy ; was that a necessary manœuvre to protect my disabled ships, and to collect the fleet together ?

A. It was.

Q. Had it the least appearance of a flight ?

A. No ; certainly not.

Q. Do you recollect what sail the Victory carried, in the afternoon ?

A. I do not ; I know we kept in our station, under double reefed topsails, and the mizen topsail frequently a-back.

Q. Did you see the French fleet on the morning of the 28th ?

A. I saw only three sail, they were going large before the wind with all their studding sail set.

Q. If I had chaced towards Ushant, wind and weather as it was, with the fleet in the condition they were, was there the smallest probability of coming up with the French fleet before they entered Brest ?

A. Not the smallest probability in my opinion.

Q. As you have heard all the articles of the charge read, I therefore desire you will state to the Court in what instance (if you saw or know of any) in which I negligently performed any part of my duty on the 27th or 28th of July ?

A. I can state no instance of negligence, neither did I see or know of any ; you discharged your duty as became a brave and gallant officer.

*Cross.*

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*Cross-Examined.*

Q. Do you recollect stopping fire on board the Vigilant because you fired into one of our own ships?

A. I do not

Withdrew.

Sir CHARLES DOUGLAS, Commander of the Stirling-Castle.

Q. Did the fleet endeavour to come to action, or avoid it, from the 24th to the 27th of July?

A. They always endeavoured to avoid it.

Q. Did I use my utmost endeavours to bring them to action during those days?

A. You did, with unremitting assiduity.

Q. Had you commanded a British fleet, situated as the French fleet were, would you have hesitated a moment of leading down to battle on account of the wind and weather, as it was on any of those days?

A. Had I commanded a British fleet I could not have desired more favourable opportunities to engage a French fleet than offered to the French on those days, as we were continually leading up to them, endeavouring to bring on an action.

Q. I am charged with advancing and making signal for battle without forming a line, what in your judgment would have been the consequence had I formed a line and not closed with them as I did?

A. Judging of their former conduct, I do not think you could have brought them to action at all, and indeed, even without forming a line, had it not been for a favourable shift of wind, I don't think we should have been able to fetch within cannon shot of them.

Q. I am charged with hauling down the signal for battle; what in your judgment would have been



the effect had I continued the signal flying, and have ordered Sir Robert Harland's division to re-attack directly as he had passed the rear of the enemy's line, and was on the larboard tack ?

A. I think such a manœuvre would have been attended with disadvantageous consequences, such part of the Red division, not having been of sufficient force to attack the whole of the French fleet, and moreover, not having been close up together.

Q. Did you see the French fleet wear and begin to form their line on the starboard tack ?

A. I saw part of the French fleet make sail, and form themselves into a line of battle a-head.

Q. I am charged with wearing and standing to the southward : did that appear to you as a necessary manœuvre, or had it the appearance of flight ?

A. It appeared to me then to be a necessary manœuvre, nor had it by any means the appearance of a flight, nor did it make the least impression on me to that effect.

Q. What sail was you under in the night of the 27th ?

A. Under close reefed top-sails and mizen stay-sails, sometimes the fore-tack aboard, and the fore-sail frequently hauled up, and my ship being foul, I did not dare use the usual method of backing my mizen top-sail, for fear of falling back to leeward.

Q. Did the very bad failing of your ship occasion your failing entirely a-stern, and getting into the center division ?

A. No.

Q. Did you during the night of the 27th of July, and at what time, order your men to quarters, upon a ship ranging up with you, and which you then thought was an enemy ?

A. At

A. At, or about the first dawn of day, leaving my leader the Berwick in my eye, I was coveting to keep myself to windward, and was then actually upon her weather quarter to the enemy, that I might have it in my favour to re-assume my place with more precision in the line of battle as day-light should advance; I observed a ship ranging upon my weather quarter; at first I think about three points; not knowing who it might be, I thought it prudent to order my men to their quarters, and re-assume our preparations for battle, which had been for some time discontinued.

Q. What ship was it?

A. As the ship approached my beam I could plainly discern a flag at her fore top-mast head, the colour of which I could not ascertain with certainty; passing further along, and no act of hostility having passed between us, I presumed it to be the Formidable, although she had neither top nor poop light, nor ensign flying, neither any light at the bowsprit end; about this time I bore up a little; as the day opened I could do it with safety, and get more precisely into my station in the line of battle, a-head of the Courageux; as the ship in question was passing along by me, she bore farther forward; we then observed her have a blue ensign flag, and seeing the ship approach in the manner described, I do confess I was not without some apprehension that the enemy had, by stretching away upon the larboard tack, doubled upon our rear, in order to get the weather gage, and having, at or about the same time, seen other ships in the same quarter of the compass, my suspicions grew the stronger, in-so-much that I did ruminate, or entertain the idea of making the signal for seeing strange ships in the N. W. quarter, and had actually proceeded so far in my own mind, as to be pondering whether I should make the

day or night signal, which nearly fixes the time it happened.

Q. When the day came was you sure it was the Vice-Admiral of the Blue you had seen?

A. It could be no other.

Q. On the 28th had I chaced with the British fleet towards Ushant, was there the least probability of coming up with the fleet of France before they entered the port of Brest?

A. If the French fleet observed their former line of conduct, you could not.

Q. You have heard all the articles of the charge read, I therefore desire you will state to the Court in what instance, if you saw or knew of any such, in which I negligently performed my duty on either the 27th or 28th of July?

A. I did not observe any thing done, or left undone, by Admiral Keppel, on the 27th or 28th of July, bearing the appearance of his negligently performing his duty.

Sir Hugh Palliser. I have no questions to ask.

Captain CROSBY of the Centaur.

Q. I am charged with advancing to the enemy, and of making the signal for battle on the morning of the 27th, without forming a line; what in your judgment would have been the consequence had I not closed with the enemy as I did?

A. We should have increased our distance from the enemy, and could not have brought on the action.

Q. How many ships had the Vice-Admiral of the Red with him, advancing to the enemy on the larboard tack after the action?

A. I believe six or seven, the Centaur was one of them.

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Q. I am charged with hauling down the signal for battle, and preventing the Red division from renewing the fight on the larboard tack; I desire you will inform the Court what in your judgment would have been the case had I ordered the Red division to attack the enemy at that time?

A. If the Red division had been ordered to attack, I am certain he would have done it, but it would have been a dangerous experiment, as from the situation of the fleet in general he could not be supported.

Q. Did you see the French fleet wear and begin to form a line on the starboard tack?

A. I did.

Q. I am charged at this time of leading the British fleet directly from them; did my wearing at this time appear to you like a flight, or a necessary manœuvre?

A. The Commander in Chief was the best judge whether it was a necessary manœuvre: as to a flight, the idea could never strike me, from the manner in which the manœuvre was performed.

Q. You have heard all the articles of the charge read, I desire you will inform the Court in what instance (if you saw or knew of any such) in which I negligently performed my duty on the 27th or 28th of July?

A. Mr. President, if I am allowed, from the experience of thirty years in the service, to assume an opinion of judging on the conduct of a Commander in Chief, especially so great an officer as Admiral Keppel, I must say, that to the best of my judgment, he did do the utmost in his power for the benefit of his Majesty's service on those days; it was the first time I ever sailed under him, and it is one of the most unfortunate events in my servitude, that I never served under him before.

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Captain



Captain NOTT of the Exeter.

The same questions exactly, as had been put to Capt. Crosby, were put, to which the following answers were given :

First Question. A. I am confident we should have had no action that day.

Second Question. A. To the best of my recollection, six or seven, the Exeter was one.

Third Question. A. Destruction to the whole of the division.

Fourth Question. A. I did not.

Fifth Question. A. It appeared a necessary manœuvre, and quite contrary to a flight; in thirty years service I never yet saw an Englishman turn his back on a Frenchman.

Sixth Question. A. I know of none, I have had the honour of serving under you before, and it was the greatest of my pride to be honoured with a commission under you again; I know you to be a gallant seaman, and I thought you the greatest Admiral in the world; your conduct towards the French fleet, during the whole time it was in sight, convinced me, in my opinion, of your abilities, skill, and bravery.

The Hon. Captain KEITH STEWART of the Berwick.

Q. If I had formed the line of battle instead of closing with the French as I did, what would have been the consequence?

A. I apprehend they would not have been brought into action that day.

Q. Did my wearing to the starboard tack appear to you a necessary manœuvre?

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A. It appeared to me a necessary manœuvre; I never conceived it to be meant as a flight, but, on the contrary, I expected to be again in battle before five o'clock.

Q. Did I make every necessary signal to collect the fleet while on that tack?

A. Yes.

Q. If I had chased towards Ushant with the fleet in the situation they were in, was there the least probability of coming up with the French fleet before they reached Brest?

A. I think certainly not.

Q. I desire you to state to the Court any instance wherein I negligently performed my duty on the 27th or 28th of July?

A. I know of none.

*February 8.*

*Lieutenant LUMLEY, of the Robuste.*

Q. Is your log-book an exact copy of the original log-book of the Robuste?

A. Yes, with some additions of my own, but they are in parenthesis.

Q. Please to take the two books, examine them, and let the Court know the difference.

The Judge Advocate took the original book and the witness the other, and compared them, many alterations were apparently made, but the most material was, in the book delivered in by the master of the Robuste: It says, at six o'clock bore down into our station in the line, which we kept all night as well as a disabled ship could do, the Admiral making much fail. The book of Lieutenant Lumley, and which he swore was an exact copy of the original before the new leaf was put in, says, at six o'clock, tacked and bore

bore down into our station in the line, and no mention was made of carrying much sail. Another material alteration was, the original book mentioned, that on the morning of the 27th, the Admiral made a signal for the Blue Squadron to chase, whereas the alteration made it for six or seven ships only, upon which Sir Hugh Palliser grounds one of his articles, that he was left to go into action with only three or four ships.

Q. When did you first come on deck on the 28th of July?

A. At three o'clock.

Q. Where was the Robuste when day-light appeared?

A. On the Vice-Admiral of the Red's weather quarter, within hail of him.

Q. What sail had the Robuste, when you came upon deck?

A. Close reefed top-sails, courses, and lower stay-sails.

Q. Did you shorten sail, or continue the same?

A. Soon after I was on deck, the first Lieutenant came upon deck, and finding that the ship to leeward had a red flag at the fore top-mast head, we backed our mizen top-sail, and I think took down the stay-sails.

Q. Was the Vice-Admiral of the Red a-head of the center division at that time?

A. He was.

*Cross-examination.*

Q. Was you present when these alterations were made in the log-book?

A. No, I was present once when some leaves were tearing out, which made me imagine that an alteration was going to take place.

Q. Can

Q. Can you say when that was ?

A. About the 6th of December.

Q. by Admiral Arbuthnot. Where was your ship then ?

A. I don't know whether she was at Spithead, or in harbour.

Q. When you came upon deck, did you find the main-sail set ?

A. Yes.

Q. Did the officer you relieved tell you the occasion of setting it ?

A. He said, on consulting the Captain he was obliged to do it to keep sufficiently a-head of the Vice-Admiral of the Blue.

Q. Did he shew you the Admiral's light ?

A. No, the ship he told me was the Vice-Admiral of the Blue had no light, I saw none.

Q. Was that ship a-stern of you ?

A. Yes.

Q. Did you see the Vice-Admiral of the Red's lights before you discovered the colour of his flag ?

A. I saw them, but did not take notice how many there were.

Q. by Admiral Montagu. When day-light did appear, where did you see the Formidable ?

A. I being on the quarter deck, did not see her, the first Lieutenant went on the poop and looked at her.

Withdrew.

Mr. ROBERT ARNOLD, Master of the Robuste.

Q. When were the alterations made in the Robuste's log-book ?

A. The last were made on the 12th of December.

Q. Do you recollect what time of the day they were made ?



A. Between eleven in the morning, and two in the afternoon?

Q. By whose orders were they made?

A. By Captain Hood's.

Q. Do you know whether Sir Hugh Palliser was at Portsmouth at that time?

A. I do not.

Q. Where was the Robuste on the morning of the 28th?

A. On the starboard quarter of the Queen, at the distance of about two cables length.

*Cross-examination.*

Q. Did Captain Hood, when you made the alterations, desire you to make them such, that you could swear to, if called on for that purpose?

A. When I received his orders, I made no scruple, but on his going away, he said, I think, to the Lieutenant—I only wish the log-book to be correct. You can attest. These were his words.

Q. What Lieutenant was that with you?

A. The first. Mr. Inglefield.

Q. by Admiral Arbuthnot. Do you know the Admiral, Commander in Chief, did carry much sail in the night of the 27th?

A. I do not. I was not upon deck in the night myself.

Q. When Captain Hood said, you can attest to the alterations, what answer did you make?

A. I replied, yes, meaning those parts that fell under my observation.

Mr. K E P P E L.

Mr. President, when my accuser finished his evidence, he desired to put in his claim to call in Capt. Hood,

Hood, should his character be attacked on account of the alteration in the log-book; I declare I am unwilling to enter upon the subject; but as Captain Hood mentioned before this Court, that when he made the alteration, he did not know but he might be called as a prisoner instead of a witness, I therefore must shew to the Court the fallacy of such an assertion. There is not one of the alterations that in the least affects the transactions of the *Robuste*, but every one of them lead to some of the articles of the charge against me, therefore I shall leave the Court to judge whether the alterations were made to clear Captain Hood, or affect me. In the name of God, how could altering the signal from the words "Blue Squadron to chase in the morning of the 27th," to saying "six or seven ships only of the Blue division," affect him? In the next place, what occasion had he to insert in his new edition of the log-book, the seeing of three sail on the morning of the 28th, which he had not in the original book noticed: could their escape affect him? But the last and most material alteration I shall now mention, the saying, I carried much sail: that is a part, Sir, that was aimed at my life; and if it missed that, it was meant to wound, what is much dearer to me, my reputation. Had the *Robuste* in the night of the 27th, fallen a-stern, Captain Hood might then have conjectured that I carried much sail, but how different do we find ships; the *Robuste* was not struggling to get up in her place, she had even, with the easy sail that Lieutenant Lumley describes her to be under, got many miles a-head of her station.

When I am obliged to mention these circumstances, it is with the deepest sorrow, as Captain Hood has been proved to be a brave officer; and in the action of the 27th behaved with the greatest courage; therefore I am astonished what could induce him to

*Sir J. Hamilton.] ( 408 )*

be led by the designs of artful men to make these wicked alterations.

When I have had occasion to mention the neglect of the Blue division, I have attacked the Vice-Admiral himself, not his officers; they are men whom I esteem; and must own I was astonished, so late as Saturday last, to hear a question \* from the Vice-Admiral which meant to criminate them, but I was equally happy to hear the question so nobly answered.

[ \* See Capt. Jarvis's evidence, p. 394, when Sir Hugh Palliser asked, Was not the signal flying on board the Commander in Chief, a sufficient warrant for the officers of my division to have borne down without my repeating the signal? ]

Sir JOHN HAMILTON of the *Hector*.

Q. As I am charged with making the signal for battle without forming a line, what is your opinion would have been the case, had I not closed in with them as I did?

A. No action.

Q. How many ships had the Vice-Admiral of the Red with him, while standing on the larboard tack, towards the enemy?

A. Not more than five.

Q. What in your opinion would have been the consequence, had I not hauled down the signal for battle when I did, but had ordered the Vice-Admiral of the Red division to re-attack?

A. He was then in a very critical situation, advancing towards five sail of the enemy, with no ship to support him but the *Hector*; and had not the signal been hauled down, he would, undoubtedly, have been cut off.

Q. I am

Q. I am charged with having wore and stood from the enemy. I desire to know what, in your judgment, was my motive for doing so, and whether it had the smallest appearance of a flight?

A. It was a very necessary manœuvre, and had not the least appearance of flight.

Q. Had I chaced with the fleet in the morning of the 28th, was there the least probability of coming up with the French fleet before they entered the port of Brest?

A. Not the least.

Q. You have heard all the articles of the charge read. I desire you will therefore state to the Court, any instance, if you saw or knew of any such, wherein I negligently performed my duty on the 27th or 28th of July?

A. I know of none.

*Cross-Examination.*

Q. You say there were only five sail with the Vice-Admiral of the Red; at what period do you mention?

A. When the signal was hauled down.

Q. How many when you wore to stand to the southward?

A. Most of the division, I believe.

Q. Do you know how many of the Red division went with their Vice-Admiral when they formed astern of the Victory?

A. About six sail?

Q. Where were the rest?

A. Some to leeward, and others refitting after the action.

Q. Do you remember seeing the Formidable lay with her head the same way as the Red division did?

A. I don't recollect.

Withdrew.

Capt.



**Captain PRESCOT of the Queen.**

The same questions as Admiral Keppel had asked of the preceding witness, were again asked of this, to which he gave the same answers, with this addition to the last.

On being asked, Whether he saw or knew of any instance of neglect; he replied—I know of none; I received the early part of my naval instructions under you, and was always taught to look up to you with filial respect. Your character stands too high to stoop to my judgment, but as I am now called on, I am happy to declare, upon oath, that your conduct on the 27th and 28th of July, added lustre to your name, and held you up as a worthy example to every officer in the British service.

*Cross-Examination.*

Q. Had the whole British fleet tacked and renewed the fight, what fatal consequences would have attended?

A. I don't apprehend the whole British fleet could tack and renew the fight.

Q. Were not the French advancing towards the British?

A. Not that I observed.

Withdrew.

**Mr. WARE, Builder's Assistant of Plymouth-Yard.**

Please to state the condition of the fleet when they entered into Plymouth harbour.

He delivered in a paper, which he said contained a true account of all the damages the ships appeared to have received in their return into port after the action of the 27th of July.

Withdrew.

Admiral

Admiral Keppel then desired that his letters to the Lords of the Admiralty, from his first going out, until after the action, might be read; which being done, he acquainted the Court that he should call no more evidence, neither should he trouble the Court with any remarks upon what had been delivered, but leave them to decide upon the merits as they thought proper.

Sir Hugh Palliser desired the Court to grant him until Wednesday, to make some remarks upon the evidence produced by the prisoner, as it seemed he had justified himself by criminating him.

Admiral Keppel arose, and remarked, that he never knew it customary in any Court-Martial, for the prosecutor to make an address to the Court, after he had finished his evidence in support of his charge; that on the trial of the unfortunate Admiral Byng, where he presided as a member, the Secretary of the Admiralty appeared as prosecutor for the Crown, but no attempt was made to address the Court with remarks upon the evidence, therefore he was surprized why Sir Hugh Palliser could wish it now, and hoped it would not be allowed, as it would be a bad precedent.

The Court withdrew, and on their return the Judge Advocate read as follows:

The Court having declared in a former resolution, that after the accuser had mentioned his evidence being closed, they could not admit of any address, and continuing in that opinion, they have come to the resolution of hearing nothing more from either party now the evidence is closed.

*February*

*February 9 and 10.*

The Court only sat a few minutes, and adjourned each day.

On Thursday the 11th the Court met again; when the Judge Advocate, by order of the Court, pronounced their determination as follows :

At a Court-Martial assembled on board his Majesty's ship *Britannia* in Portsmouth-Harbour, the 7th of January, 1779, and held by adjournment at the house of the Governor of his Majesty's Garrison at Portsmouth, every day afterwards, Sundays excepted, to the 11th of February, 1779; inclusive.

### P R E S E N T.

PRESIDENT, Sir Thomas Pye, Admiral of the White.  
Matthew Buckle, Esq. Vice-Admiral of the Red,  
(till the close of the sixth day, when he became unable any longer to continue his attendance on account of sickness.)

John Montagu, Esq. Vice-Admiral of the Red.  
Mariot Arbuthnot, Esq; and Robert Roddam, Esq.  
Rear Admirals of the White.

### C A P T A I N S.

|                      |                |
|----------------------|----------------|
| Mark Milbank         | William Bennet |
| Francis Samuel Drake | Adam Duncan    |
| Taylor Penny         | Philip Boteler |
| John Moutray         | James Cranston |

The Court, pursuant to an order of the Lords Commissioners of the Admiralty, dated the 31st of December, 1778, and directed to Sir Thomas Pye, proceeded to enquire into a Charge exhibited by  
Vice-

Vice Admiral Sir Hugh Palliser, against the Honorable Admiral Augustus Keppel, for Misconduct and Neglect of Duty on the 27th and 28th of July last, in sundry Instances as mentioned in a Paper which accompanies the said Order, and to try him for the same—and the Court having heard the Evidence and the Prisoner's Defence, and maturely and seriously considered the whole, are of Opinion, that the Charge is Malicious and Ill-founded, it having appeared that the said Admiral, so far from having by Misconduct and Neglect of Duty on the Days therein alluded to, lost an opportunity of rendering essential Service to the State, and thereby tarnished the Honour of the British Navy, behaved as became a Judicious, Brave, and Experienced Officer.

The Court do therefore Unanimously and Honourably Acquit the said Admiral Augustus Keppel of the several Articles contained in the Charge against him, and he is hereby Fully and Honourably Acquitted accordingly.

GEORGE JACKSON, Judge Advocate.

Thomas Pye  
J. Montagu  
M. Arbuthnot  
R. Roddam  
M. Milbank  
Fra. Sam. Drake

Taylor Penny  
John Moutray  
William Bennet  
Adam Duncan  
Philip Boteler  
James Cranston

(A true Copy)

GEORGE JACKSON.



The President then addressed himself to the Admiral in the following words, delivering to him his sword at the same time :

“ Admiral Keppel,

“ It is no small pleasure to me to receive the commands of the Court I have the honour to preside at; that in delivering your sword, I am to congratulate you on its being restored to you with so much honour; hoping, ere long, you will be called forth by your Sovereign, to draw it once more in the defence of your country.”

The concourse of people that surrounded the Court was becoming the occasion, and was immense. As soon as the sentence was pronounced, an acclamation of joy burst forth in the Court, in repeated peals, was communicated to the crowd without, and became general through the town; a signal gun was fired to dispatch the tidings to Spithead, and the ships immediately saluted and cheered. The East-Indiamen at Motherbank fired nineteen vollies. After waiting some little time, the Admiral came forward, and again received the heart-felt gratulations of the multitude. He yielded to the solicitations of the navy at large, and walked home in procession, preceded by a band of music, and attended by the Admirals and Captains of the fleet.

The

The proceſſion was as follows :—

A Band of Muſic.

|                           |   |             |   |                                                  |
|---------------------------|---|-------------|---|--------------------------------------------------|
| Admiral<br>Sir R. Harland | } | The ADMIRAL | } | His Royal Highneſs<br>the Duke of<br>Cumberland. |
|                           |   |             |   |                                                  |

Gen. Keppel, Adm. Campbell, Sir Edw. Hughes,  
Lord Effingham, Marquis of Rockingham, Duke  
of Richmond, and other Noblemen.

Captains.

Private Gentlemen.

&c. &c. &c.

The noblemen and gentlemen had light blue ribbons in their hats, which they carried in their hands, with the word "KEPPEL" inſerted in gold letters, preſented to them for the occaſion by the Duchefs of Cumberland, the Duchefs of Richmond, the Marchionefs of Rockingham, the Counteſs of Effingham, and other ladies of faſhion. The band played, "He comes, he comes, the hero comes," while the whole concourſe, noblemen, gentlemen in the proceſſion, and ladies from the windows, ſupplied the vocal part, and the crowd cloſed each period of the harmony with a choral cheer.

As ſoon as he had got into his own houſe he came to the window, with the Duke of Cumberland on his right hand, and Sir Robert Harland on his left, bowed to the people in the ſtreet, and then received the congratulations of the noblemen and gentlemen on his honourable acquittal, the band at the ſame time playing, "Rule Britannia." It is impoſſible to paint the joy that poſſeſſed every face. Holiday was expreſſed in every look, and the hearts of the people were in their eyes.

F I N I S.



